

NATIONAL ENERGY SECURITY ACT OF 1991

JUNE 5 (legislative day, JUNE 3), 1991.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 1220]

The Committee on Energy and Natural Resources, having considered the same, reports favorably an original bill, to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation and for other purposes, and recommends that the bill do pass.

The text of the bill is as follows:

That this Act may be referred to as the "National Energy Security Act of 1991".

TABLE OF CONTENTS

Sec. 1. Table of contents and short title.

TITLE I—FINDINGS AND PURPOSES

Subtitle A—Findings and Purposes

Sec. 1101. Findings.

Sec. 1102. Purposes.

Subtitle B—Goals, Least-Cost Energy Strategy, and Director of Climate Protection

Sec. 1201. Goals and policies.

Sec. 1202. Least-cost energy strategy.

Sec. 1203. Director of Climate Protection.

Sec. 1204. Repeal.

TITLE II—DEFINITIONS

Sec. 2101. Definitions.

TITLE III—CORPORATE AVERAGE FUEL ECONOMY

- Sec. 3101. Short title.
- Sec. 3102. Definitions.
- Sec. 3103. Average fuel economy standards for passenger automobiles.
- Sec. 3104. Average fuel economy standards for light trucks.
- Sec. 3105. Exemptions for manufacturers of limited numbers of passenger automobiles.
- Sec. 3106. Calculation of average fuel economy standards for individual manufacturers.
- Sec. 3107. Determination of maximum feasible average fuel economy.
- Sec. 3108. Amendment of standards.
- Sec. 3109. Proceedings.
- Sec. 3110. Credit trading.
- Sec. 3111. Calculation of fuel economy for light trucks.
- Sec. 3112. Airbag credit for small passenger automobiles.
- Sec. 3113. Explanatory booklet distributed by Secretary of Energy.
- Sec. 3114. Excessive fuel consumption fee.
- Sec. 3115. Amount of the excessive fuel consumption fee.
- Sec. 3116. Establishment of the Excessive Fuel Consumption Fund.
- Sec. 3117. Scrappage of older vehicles.
- Sec. 3118. Technical and conforming amendments.

TITLE IV—FLEETS AND ALTERNATIVE FUELS

Subtitle A—Alternative Fuel Fleets

- Sec. 4101. Definitions.
- Sec. 4102. Federal fleets.
- Sec. 4103. State fleets.
- Sec. 4104. Private and municipal fleets.
- Sec. 4105. Rules of general applicability.
- Sec. 4106. Exemptions.
- Sec. 4107. Vehicle conversions.
- Sec. 4108. Credits.
- Sec. 4109. Reports.
- Sec. 4110. Enforcement.
- Sec. 4111. Implementation.

Subtitle B—Electric and Electric-Hybrid Vehicle Demonstration, Infrastructure Development, and Conforming Amendments

PART A—ELECTRIC AND ELECTRIC-HYBRID VEHICLE DEMONSTRATION

- Sec. 4201. Short title.
- Sec. 4202. Definitions.
- Sec. 4203. Program and solicitation.
- Sec. 4204. Selection of proposals.
- Sec. 4205. Discount payments to users.
- Sec. 4206. Cost-sharing.
- Sec. 4207. Reports to Congress.
- Sec. 4208. Authorization.

PART B—ELECTRIC AND ELECTRIC-HYBRID VEHICLE INFRASTRUCTURE DEVELOPMENT

- Sec. 4211. Short title.
- Sec. 4212. Definitions.
- Sec. 4213. Data acquisition to support infrastructure development and markets for use of electric vehicles and electric-hybrid vehicles.
- Sec. 4214. State infrastructure development plans.
- Sec. 4215. Electric utility and other industry infrastructure development projects.
- Sec. 4216. Cost-sharing.
- Sec. 4217. Compliance with existing law.
- Sec. 4218. Authorization.

PART C—AMENDMENT TO THE ALTERNATIVE MOTOR FUELS ACT

- Sec. 4221. Amendments to the Energy Policy and Conservation Act.
- Sec. 4222. Amendments to the Motor Vehicle Information and Cost Saving Act.

Subtitle C—Alternative Fuels

- Sec. 4301. Short title.
- Sec. 4302. Findings.
- Sec. 4303. Purposes.
- Sec. 4304. Definitions.
- Sec. 4305. Replacement and alternative fuel program.
- Sec. 4306. Alternative fuel demand estimates.
- Sec. 4307. Voluntary supply commitments.
- Sec. 4308. Secretarial authority.
- Sec. 4309. Authorization.

Subtitle D—Mass Transit and Training

- Sec. 4401. Mass transit.
- Sec. 4402. Training program.

TITLE V—RENEWABLE ENERGY

Subtitle A—CORECT and COEECT

- Sec. 5101. Duties of CORECT and COEECT.
- Sec. 5102. Information and technical program.
- Sec. 5103. Comprehensive energy technology evaluation.
- Sec. 5104. Conforming amendment.

Subtitle B—Renewable Energy Initiatives

- Sec. 5201. Renewable energy development, technology export, training and commercialization.
- Sec. 5202. Report on waste minimization technologies in industry.
- Sec. 5203. Amendments to the Energy Policy and Conservation Act.
- Sec. 5204. Spark M. Matsunaga Renewable Energy and Ocean Technology Center.
- Sec. 5205. Renewable energy technical achievement award.

Subtitle C—Hydropower

- Sec. 5301. Streamlining of Federal Power Act regulation.
- Sec. 5302. State licensing jurisdiction over small projects.
- Sec. 5303. Improvement at existing Federal facilities.
- Sec. 5304. Water conservation and energy production.
- Sec. 5305. Projects on fresh waters in the State of Hawaii.
- Sec. 5306. Certain projects in the State of Alaska.
- Sec. 5307. Extension of time limitation for certain projects in Arkansas.

TITLE VI—ENERGY EFFICIENCY

Subtitle A—Industrial, Commercial and Residential

- Sec. 6101. Building energy efficiency codes.
- Sec. 6102. Residential energy efficiency ratings and mortgages.
- Sec. 6103. Manufactured housing energy efficiency.
- Sec. 6104. Improving efficiency in energy intensive industries.
- Sec. 6105. Report.
- Sec. 6106. Voluntary guidelines for industrial plants.
- Sec. 6107. Energy efficiency labeling for windows and window systems.
- Sec. 6108. Energy efficiency information.
- Sec. 6109. Energy efficiency labeling for lamp and luminaires.
- Sec. 6110. Commercial and industrial equipment standards.
- Sec. 6111. Energy efficiency of showerheads.

Subtitle B—Federal Energy Management

- Sec. 6201. Federal energy management amendments.
- Sec. 6202. Plan regarding demonstration of new technology.
- Sec. 6203. Study of Federal purchasing power.

Subtitle C—Utilities

- Sec. 6301. Encouragement of investments in conservation and energy efficiency resources and study of certain state ratemaking policies.
- Sec. 6302. Conservation grants to state regulatory authorities.

- Sec. 6303. Integrated resource planning by customer of power marketing administrations.
- Sec. 6304. Tennessee Valley Authority. Integrated resource planning and implementation.

Subtitle D—Used Oil Energy Production

- Sec. 6401. Purpose.
- Sec. 6402. Requirements for energy production from used oil.
- Sec. 6403. Listing or identification of used oil.
- Sec. 6404. Sunset provision.

Subtitle E—State, Local, Insular and Tribal Energy Assistance

- Sec. 6501. Insular areas energy assistance program.
- Sec. 6502. State buildings energy incentive fund.
- Sec. 6503. Private sector investments in low income weatherization.
- Sec. 6504. Training of building designers and contractors.
- Sec. 6505. Energy education and teacher training.
- Sec. 6506. Tribal government energy assistance program.
- Sec. 6507. State energy conservation plan requirement.

Subtitle F—LIHEAP Options Pilot Program

- Sec. 6601. Short title.
- Sec. 6602. Study.
- Sec. 6603. Authority for pilot programs.
- Sec. 6604. Definitions.

TITLE VII—OIL AND GAS LEASING IN THE ARCTIC NATIONAL WILDLIFE REFUGE

Subtitle A—Statement of Purpose and Definitions

- Sec. 7101. Purpose and policy.
- Sec. 7102. Definitions.

Subtitle B—Congressional Determination of Compatibility

- Sec. 7201. Congressional Determination.

Subtitle C—Coastal Plain Competitive Leasing Program

- Sec. 7301. Leasing program for lands within the coastal plain.
- Sec. 7302. Rules and regulations.
- Sec. 7303. Adequacy of the Department of the Interior's legislative environmental impact statement.
- Sec. 7304. Lease sales.
- Sec. 7305. Grant of leases by the Secretary.
- Sec. 7306. Lease terms and conditions.
- Sec. 7307. Exploration and development and production plans.
- Sec. 7308. Bonding requirements.
- Sec. 7309. Lease suspension.
- Sec. 7310. Lease cancellation.
- Sec. 7311. Assignment or subletting of leases.
- Sec. 7312. Relinquishment.
- Sec. 7313. Unitization.
- Sec. 7314. Oil and gas information.
- Sec. 7315. Remedies and penalties.
- Sec. 7316. Expedited judicial review.
- Sec. 7317. Annual report to Congress.
- Sec. 7318. Interests of the Inupiat Eskimo People.

Subtitle D—Coastal Plain Environmental Protection

- Sec. 7401. No significant adverse effect standard to govern authorized Coastal Plain activities.
- Sec. 7402. Regulations to protect the Coastal Plain's fish and wildlife resources, subsistence users, and the environment.
- Sec. 7403. Sadlerochit Spring special area.
- Sec. 7404. Facility consolidation planning.
- Sec. 7405. Rights-of-way across the Coastal Plain.
- Sec. 7406. Environmental studies.

- Sec. 7407. Enforcement of safety and environmental regulations.
- Sec. 7408. Funding for environmental monitoring and enforcement.

Subtitle E—Land Reclamation and Reclamation Liability Fund

- Sec. 7501. Land reclamation.
- Sec. 7502. Standard to govern land reclamation.
- Sec. 7503. Coastal Plain Liability and Reclamation Fund.

Subtitle F—Disposition of Oil and Gas Revenues

- Sec. 7601. Distribution of revenues.
- Sec. 7602. Energy Security Fund.
- Sec. 7603. Funding for arctic research programs.

Subtitle G—Export Restrictions

- Sec. 7701. Crude oil export restrictions.

Subtitle H—Outer Continental Shelf Leasing Moratoria

- Sec. 7801. Prohibition of leasing and preleasing activity.

TITLE VIII—ADVANCED NUCLEAR REACTOR COMMERCIALIZATION

- Sec. 8101. Short title.
- Sec. 8102. Findings, purposes, and definitions.
- Sec. 8103. Program, goals, and plan.
- Sec. 8104. Commercialization of advanced light water reactor technology.
- Sec. 8105. Prototype demonstration of advanced nuclear reactor technology.
- Sec. 8106. Authorization.

TITLE IX—NUCLEAR REACTOR LICENSING

- Sec. 9101. Short title.
- Sec. 9102. Combined licenses.
- Sec. 9103. Post-construction hearings on combined licenses.
- Sec. 9104. Rulemaking.
- Sec. 9105. Amendment of a combined license pending a hearing.
- Sec. 9106. Conforming amendment.
- Sec. 9107. Effect on pending proceedings.

TITLE X—URANIUM

Subtitle A—Uranium Enrichment

- Sec. 10101. Short title.
- Sec. 10102. Deletion of section 161v.
- Sec. 10103. Redirection of the uranium enrichment enterprise of the United States.
- Sec. 10104. Treatment of the Corporation as being privately owned for purposes of the applicability of environmental and occupational safety laws.
- Sec. 10105. Miscellaneous provisions.
- Sec. 10106. Limitation on expenditures.
- Sec. 10107. Severability.
- Sec. 10108. Effective date.
- Sec. 10109. Payment of cost of transfer.

Subtitle B—Uranium

PART 1—SHORT TITLE, FINDINGS AND PURPOSE, DEFINITIONS

- Sec. 10211. Short title.
- Sec. 10212. Findings and purpose.
- Sec. 10213. Definitions.

PART 2—URANIUM REVITALIZATION

- Sec. 10221. Voluntary overfeed program.
- Sec. 10222. National Strategic Uranium Reserve.
- Sec. 10223. Responsibility for the industry.
- Sec. 10224. Government uranium purchases.
- Sec. 10225. Secretary's authority to make regulations.

PART 3—REMEDIAL ACTION FOR ACTIVE PROCESSING SITES

- Sec. 10231. Remedial action program.
- Sec. 10232. Regulations.
- Sec. 10233. Authorization.

PART 4—IMPORTS OF URANIUM, ENRICHED URANIUM, AND URANIUM ENRICHMENT SERVICES

- Sec. 10241. Findings and purposes.
- Sec. 10242. Definitions.
- Sec. 10243. United States International Trade Commission investigation.
- Sec. 10244. Uranium purchase reports.
- Sec. 10245. Regulatory treatment of uranium purchases.
- Sec. 10246. United States purchase of enriched uranium.

TITLE XI—NATURAL GAS

- Sec. 11101. Optional certificate procedures.
- Sec. 11102. Transportation of natural gas under the NGPA.
- Sec. 11103. NEPA compliance.
- Sec. 11104. Rates and charges.
- Sec. 11105. Utilization of rulemaking procedures.
- Sec. 11106. Review of commission orders.
- Sec. 11107. Limited antitrust relief for independent gas producer cooperatives.
- Sec. 11108. Vehicular natural gas jurisdiction.
- Sec. 11109. Streamlined certificate procedures.
- Sec. 11110. Gas delivery interconnection.
- Sec. 11111. Deregulation of pipeline sales of natural gas.
- Sec. 11112. Commission policy making.

TITLE XII—OUTER CONTINENTAL SHELF

- Sec. 12101. Coastal State and community Outer Continental Shelf impact assistance.
- Sec. 12102. Report on the availability of the Outer Continental Shelf for leasing.

TITLE XIII—RESEARCH, DEVELOPMENT, DEMONSTRATION AND COMMERCIALIZATION ACTIVITIES

- Sec. 13101. Energy research, development, demonstration, and commercialization priorities.
- Sec. 13102. Management plan.
- Sec. 13103. Natural gas end-use technologies.
- Sec. 13104. Natural gas supply enhancement.
- Sec. 13105. High efficiency heat engines.
- Sec. 13106. Oil shale research and development.
- Sec. 13107. Western oil shale research and development.
- Sec. 13108. High-temperature superconducting electric power system.
- Sec. 13109. Renewable energy research and development.
- Sec. 13110. Energy efficiency research and development.
- Sec. 13111. Natural gas and electric heating and cooling technologies.
- Sec. 13112. Fusion.
- Sec. 13113. Electric vehicle, electric-hybrid vehicle, and associated equipment research and development.
- Sec. 13114. Advanced oil recovery research, development and demonstration.
- Sec. 13115. Tar sands.
- Sec. 13116. Telecommuting study.
- Sec. 13117. Study of minimization of nuclear waste.
- Sec. 13118. Nuclear waste management plan.
- Sec. 13119. Math and science education program.

TITLE XIV—COAL, COAL TECHNOLOGY, AND ELECTRICITY

Subtitle A—Coal and Coal Technology

- Sec. 14101. Coal research, development and demonstration program.
- Sec. 14102. Non-fuel use of coal.
- Sec. 14103. Coal refining program.
- Sec. 14104. Underground coal gasification.
- Sec. 14105. Low rank coal research and development.
- Sec. 14106. Magnetohydrodynamics.

- Sec. 14107. Coal fired locomotives.
- Sec. 14108. Coal exports.
- Sec. 14109. Clean Coal Technology Export Coordinating Council.
- Sec. 14110. Coal fuel mixtures.
- Sec. 14111. National clearing house.
- Sec. 14112. Study of utilization of coal combustion byproducts.
- Sec. 14113. Establishment of data base and study of coal transportation rates.

Subtitle B—Electricity

- Sec. 14201. Applicability of new source review to existing electric utility steam generating units.
- Sec. 14202. Excess capacity study.
- Sec. 14203. Calculation of avoided cost.
- Sec. 14204. Clean coal technology regulatory incentives.

TITLE XV—PUBLIC UTILITY HOLDING COMPANY ACT REFORM

- Sec. 15101. Exempt wholesale generators.
- Sec. 15102. Ownership of exempt wholesale generators and qualifying facilities.
- Sec. 15103. Prevention of stranded investment.
- Sec. 15104. Prevention of sham wholesale transactions.
- Sec. 15105. Protection against abuse of affiliate relationships.
- Sec. 15106. State authority.
- Sec. 15107. State consideration of the effects of power purchases on utility cost of capital; consideration of the effects of leveraged capital structures on the reliability of wholesale power sellers; and consideration of adequate fuel supplies.
- Sec. 15108. State commission access to EWG books and records.

TITLE XVI—STRATEGIC PETROLEUM RESERVE

- Sec. 16101. Oil security protection.

TITLE I—FINDINGS AND PURPOSES

Subtitle A—Findings and Purposes

SEC. 1101. FINDINGS.—The Congress finds that—

(1) the achievement of energy security for the United States is essential to the health of the national economy and the maintenance of national security;

(2) as an energy-rich country that nonetheless depends on oil imports for an increasing share of oil use, United States energy security requires that the Nation reduce oil consumption, maximize domestic oil production, and particularly for transportation purposes, encourage use of energy sources other than oil; and

(3) this can be accomplished with no significant adverse effect on the environment, and will stimulate economic growth, improve the competitiveness of United States industry in the global market, and reduce the possibility of global climate change.

SEC. 1102. PURPOSES.—The purposes of this Act are to—

(1) slow the Nation's increasing dependence on imported oil over the short-term, and in the long-term significantly reduce that dependence;

(2) reduce the consumption of oil in the transportation sector, and encourage development and use of alternative energy sources, particularly for transportation;

(3) encourage development and deployment of renewable energy sources in the United States and on an international basis in lesser-developed countries;

(4) streamline the hydroelectric licensing process and encourage hydroelectric development at Federal dams;

(5) encourage more efficient use of energy throughout the economy, including improvements in the industrial, commercial and residential sectors, increasing energy efficiency in Federal energy management, and encouraging more efficient energy use by electric utilities;

(6) provide for oil and gas exploration, production, and development in the Arctic National Wildlife Refuge in Alaska in an environmentally sound manner;

(7) encourage the production and use of nuclear power by providing for the commercialization of advanced nuclear reactor technologies and improving the nuclear reactor licensing process;

(8) enhance the competitive position of the Federal uranium enrichment enterprise;

(9) encourage increased utilization of natural gas and other domestic energy resources to displace imported oil and meet domestic energy demand in a manner consistent with environmental values;

(10) encourage the development of domestic energy resources on the Outer Continental Shelf;

(11) establish priorities for Federal energy research, development, demonstration, and commercialization;

(12) encourage enhanced oil and gas recovery from known and producing domestic reserves;

(13) enhance the role of coal and clean coal technology in meeting the Nation's energy needs;

(14) foster competition in the electric utility industry; and

(15) provide enhanced oil security protection through the Strategic Petroleum Reserve.

Subtitle B—Goals, Least-Cost Energy Strategy, and Director of Climate Protection

SEC. 1201. GOALS AND POLICIES.—(a) GOALS.—The goals of this subtitle are to—

(1) investigate the feasibility and economic, energy, social, environmental and competitive implications of the stabilization of the generation of carbon dioxide and other greenhouse gases in the United States;

(2) assess the feasibility of further limiting, or reducing, the generation of carbon dioxide and other greenhouse gases not controlled by the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer;

(3) investigate the feasibility and economic, energy, social, and environmental implications of achieving a 20 percent reduction in the generation of carbon dioxide by the year 2005 as recommended by the 1988 Toronto Scientific World Conference on the Changing Atmosphere;

(4) investigate the feasibility and economic, energy, social, and environmental implications of stabilizing carbon dioxide emissions by the year 2005; and

(5) evaluate the potential social, economic, energy, and environmental implications of implementing the policies mentioned in paragraphs (1), (2), (3), and (4) in order to enable the United States to comply with any obligations under an international global climate change framework convention or agreement.

(b) **POLICIES.**—The least-cost energy strategy under section 1202 shall evaluate the economic, energy, social, environmental, technical, and competitive impacts of the implementation of policies to be considered in section 1201(a) that include, but are not limited to, policies that:

- (1) implement standards for more efficient use of fossil fuels;
- (2) increase the energy efficiency of existing technologies;
- (3) encourage technologies, including clean coal technologies, that generate lower levels of carbon dioxide and other greenhouse gases;
- (4) promote the use of renewable energy resources, including solar, geothermal, sustainable biomass, hydropower, and wind power;
- (5) affect the development and consumption of energy and energy efficiency resources and electricity through tax policy;
- (6) encourage investment in energy efficient equipment and technologies; and
- (7) encourage the development of energy technologies, such as advanced nuclear fission and nuclear fusion, that produce energy without carbon dioxide and other greenhouse gases as a byproduct, and encourage the deployment of nuclear electric generating capacity.

(c) **CHLOROFLUOROCARBONS.**—The reduction of the generation of chlorofluorocarbons shall be in accordance with the provisions of the Montreal Protocol, unless subsequent Federal legislation is enacted establishing new guidelines for the reduction or elimination of the use of chlorofluorocarbons.

(d) **FRAMEWORK CONVENTION.**—In order to promote international cooperation in addressing potential global climate change, it is the goal of the United States to establish by 1992, an international framework convention on global climate change through the activities of the Negotiating Committee for a Framework Convention of the United Nations International Environmental Program and the World Meteorological Organization and to secure the commitment of the community of nations to such convention.

SEC. 1202. LEAST-COST ENERGY STRATEGY.—(a) **STRATEGY.**—The first National Energy Policy Plan (the "Plan") under section 801 of the Department of Energy Organization Act (42 U.S.C. 7321) prepared and submitted by the President to Congress after the date of the enactment of this Act, and each subsequent such Plan, shall include a least-cost energy strategy prepared by the Secretary.

(b) **PRIORITIES.**—(1) The least-cost energy strategy shall identify Federal priorities for the encouragement of the use of energy and energy efficiency resources. In developing the least-cost energy strategy, the Secretary shall take into consideration the economic, energy, social, and environmental consequences of his choices. Such strategy shall be designed to achieve to the maximum extent practicable and at least-cost to the Nation—

(A) the energy production, utilization, and conservation objectives of the Plan; and

(B) the stabilization and eventual reductions in the generation of carbon dioxide and other greenhouse gases mentioned in section 1201(a).

(2) The least-cost energy strategy shall include—

(A) a comprehensive inventory of available energy and energy efficiency resources and their projected costs, taking into account all costs of production, transportation, and utilization of such resources, including—

(i) coal, clean coal technologies, coal seam methane, and underground coal gasification;

(ii) energy efficiency, including existing technologies for increased efficiency in production, transportation, and utilization of energy, and other technologies that are anticipated to be available through further research and development; and

(iii) other energy resources, such as renewable energy, solar energy, nuclear fission, fusion, geothermal, biomass, fuel cells, and hydropower.

(B) a proposed two-year program for assuring adequate supplies of energy and energy efficiency resources under paragraph (1), and an identification of actions that can be undertaken within existing Federal authority; and

(C) recommendations for any new Federal authority needed to achieve the purposes of this Act.

(c) SECRETARIAL CONSIDERATION.—(1) In developing the least-cost energy strategy, the Secretary shall give full consideration to:

(A) the relative costs of energy and energy efficiency resources based upon a comparison of the estimated system costs of other similarly reliable and available resources; and

(B) the economic, energy, social and environmental consequences resulting from the establishment of any particular order of Federal priority.

(2) System costs under paragraph (1) are all direct and quantifiable net costs for the resource over its available life, including the cost of production, transportation, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply.

(3) When comparing an energy efficiency resource to an energy resource, a higher priority shall be assigned to the energy efficiency resource whenever its estimated system cost is equal to the estimated system cost of the energy resource.

SEC. 1203. DIRECTOR OF CLIMATE PROTECTION.—(a) APPOINTMENT.—Within six months after the date of the enactment of this Act, the Secretary shall appoint within the Department, a Director of Climate Protection (the "Director"). The Director shall:

(1) in the absence of the Secretary, serve as the Secretary's representative for interagency and multilateral policy discussions of global climate change;

(2) monitor domestic and international policies for their effects on the generation of carbon dioxide and other greenhouse gases; and

(3) have the authority to participate in the planning activities of relevant Departmental programs.

(b) Beginning 18 months after the date of the enactment of this Act, and annually thereafter, the Director shall participate in the formulation of the least-cost energy strategy under section 1202, research and development priorities under section 13101, and the management plan under section 13102.

SEC. 1204. REPEAL.—Title III of the Energy Security Act (42 U.S.C. 7361, et seq.) is hereby repealed.

TITLE II—DEFINITIONS

SEC. 2101. DEFINITIONS.—As used in this Act the term—

(a) “Secretary” means the Secretary of Energy, unless otherwise provided;

(b) “joint venture” means any agreement entered into under this Act by the Secretary with more than one or a consortium of non-Federal persons (including a joint venture under the National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.)) for cost-shared research, development, or demonstration of technologies, but does not include procurement contracts, grant agreements, or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code, and joint ventures authorized herein shall be conducted in accordance with the procedures and requirements of paragraphs (b)(1), (b)(2) and (b)(5) of section 6 of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Public Law 101-218);

(c) “non-Federal person” has the same meaning as set forth in subsection (3) of section 3 of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Public Law 101-218); and

(d) “lesser-developed countries” shall include, but not be limited to, Eastern Europe and the Soviet Union.

TITLE III—CORPORATE AVERAGE FUEL ECONOMY

SEC. 3101. SHORT TITLE.—This title may be cited as the “Motor Vehicle Fuel Efficiency Act of 1991”.

SEC. 3102. DEFINITIONS.—Section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001) is amended by adding at the end the following new paragraphs:

“(15) The term ‘light truck’ means an automobile other than a passenger automobile.

“(16) The term ‘vehicle class’ means (i) all passenger automobiles; (ii) all light trucks; or (iii) a class of light trucks as determined by the Secretary of Transportation under section 502(b)(4).”.

SEC. 3103. AVERAGE FUEL ECONOMY STANDARDS FOR PASSENGER AUTOMOBILES.—Section 502(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(a)) is amended by striking subsection (a) and inserting the following:

“(a)(1) Except as otherwise provided in subsection (c), the average fuel economy for passenger automobiles manufactured by any manufacturer in any model year after model year 1984 shall not be less

than the number of miles per gallon established for such model year under the following table:

"Average fuel economy standard

"Model year

"1985 through 1995.....	27.5 miles per gallon.
"1996 through 2001.....	Determined by the Secretary under paragraph (2)(A).
"2002 and thereafter	Determined by the Secretary under paragraph (2)(B).

"(2) Not later than July 1, 1992, the Secretary shall prescribe, by rule, for each manufacturer of passenger automobiles, average fuel economy standards for—

"(A) passenger automobiles manufactured by such manufacturer in model years 1996 through 2001; and

"(B) passenger automobiles manufactured by such manufacturer in model years 2002 and thereafter.

"(3) The average fuel economy standard prescribed by the Secretary for any manufacturer under paragraph (2)(A) or (B) shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for such manufacturer as determined under subsection (d)."

SEC. 3104. AVERAGE FUEL ECONOMY STANDARDS FOR LIGHT TRUCKS.—Section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) is amended further by striking subsection (b) and inserting the following:

"(b)(1) The Secretary shall, by rule, prescribe average fuel economy standards for light trucks which are manufactured by any manufacturer in each model year before model year 1996. Such standards shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level which such manufacturers are able to achieve in each model year to which this subsection applies. Any standard applicable to a model year under this subsection shall be prescribed at least 18 months prior to the beginning of such model year.

"(2) Not later than July 1, 1992, the Secretary shall prescribe, by rule, for each manufacturer of light trucks, average fuel economy standards for—

"(A) light trucks manufactured by such manufacturer in model years 1996 through 2001; and

"(B) light trucks manufactured by such manufacturer in model years 2002 and thereafter.

"(3) The average fuel economy standard prescribed by the Secretary for any manufacturer under paragraph (2)(A) or (B) shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for such manufacturer as determined under subsection (d).

"(4) Any rule prescribed by the Secretary under this subsection may provide for separate standards for different classes of light trucks (as determined by the Secretary)."

SEC. 3105. EXEMPTIONS FOR MANUFACTURERS OF LIMITED NUMBERS OF PASSENGER AUTOMOBILES.—Section 502(c)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(c)(1)) is amended by inserting "for any model year prior to model year

1996" immediately before the period at the end of the first sentence.

SEC. 3106. CALCULATION OF AVERAGE FUEL ECONOMY STANDARDS FOR INDIVIDUAL MANUFACTURERS.—Section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) is amended further by striking subsection (d) and inserting the following:

"(d)(1) The Secretary shall determine the maximum feasible average fuel economy achievable for passenger automobiles, light trucks, or class of light trucks manufactured by any manufacturer (i) during model year 1996 through 2001 and (ii) during model year 2002 and thereafter by—

"(A) determining, in accordance with subsection (e)(2), the maximum feasible average fuel economy (in miles per gallon) of all automobiles of such vehicle class manufactured by all manufacturers during such period;

"(B) calculating the percentage increase in the average fuel economy of all automobiles of such vehicle class that the maximum feasible average fuel economy determined in paragraph (1) represents compared to the average fuel economy of all automobiles of such vehicle class manufactured in model year 1990 as determined in accordance with section 503; and

"(C) increasing the average fuel economy of automobiles of such vehicle class manufactured by such manufacturer in model year 1990 by the percentage increase calculated in accordance with paragraph (2).

"(2) The Secretary may apply different percentage increases to different vehicle classes, but shall apply the same percentage increase calculated under paragraph (1)(B) to all manufacturers of automobiles of such vehicle class."

SEC. 3107. DETERMINATION OF MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—Section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) is amended further by striking subsection (e) and inserting the following:

"(e)(1) For purposes of subsections (a)(1), (b)(1), and (c), in determining maximum feasible average fuel economy, the Secretary shall consider—

"(A) technological feasibility;

"(B) economic practicability;

"(C) the effect of other Federal motor vehicle standards on fuel economy; and

"(D) the need of the Nation to conserve energy.

"(2) For purposes of subsections (a)(2) and (3), (b)(2) and (3), and (d), in determining the maximum feasible average fuel economy of all passenger automobiles, light trucks, or a class of light trucks, as the case may be, manufactured by all manufacturers during (i) model years 1996 through 2001 or (ii) model year 2002 and thereafter, the Secretary shall assume that, taken as a whole, the population of automobiles of such vehicle class manufactured by all manufacturers during such model year—

"(A) uses all fuel-saving technologies and designs that are capable of being commercialized by the appropriate period, considering—

"(i) the time at which improved or new technologies and designs could be introduced and the rates at which they

might penetrate the market under existing industrial capabilities; and

"(ii) any technical, financial, regulatory, organizational, and marketing limitations to deploying improved or new technologies by such period;

"(B)(i) with respect to passenger automobiles, attains the same performance level (measured by the product of torque and axle ratio divided by curb weight) as passenger automobiles manufactured in model year 1990, taken as a whole; and

"(ii) with respect to light trucks or class thereof, attains performance levels and utility comparable to such class manufactured in model year 1990;

"(C) reflects the same size mix and interior volume as automobiles of such model type manufactured in model year 1990, taken as a whole;

"(D) meets all applicable emission standards; and

"(E) meets all applicable automobile safety standards."

SEC. 3108. AMENDMENT OF STANDARDS.—Section 502(f) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(f)) is amended—

(1) by striking "subsection (a)(3)" and inserting "subsection (a)(2)" each place it appears; and

(2) by striking "if required by paragraph (4) of subsection (a)," in paragraph (2)(B).

SEC. 3109. PROCEEDINGS.—Section 502(h) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(h)) is amended by striking "Proceedings under subsection (a)(4) or (d)" and inserting "Any proceeding to promulgate or amend a rule under this section".

SEC. 3110. CREDIT TRADING.—(a) CARRYING FORWARD CREDITS.—Section 502(l)(1)(B)(ii) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(l)(1)(B)(ii)) is amended to read as follows:

"(ii) to the extent that such credit is not so taken into account pursuant to clause (i), shall be available to be taken into account with respect to the average fuel economy of that manufacturer—

"(I) for any three consecutive model years immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard with respect to credits earned for exceeding average fuel economy standards for model years prior to 1996; and

"(II) until used with respect to credits earned for exceeding average fuel economy standards for model years 1996 and thereafter."

(b) TRANSFERRING CREDITS.—Section 502(l) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(l)) is amended—

(1) by striking paragraph (3) and inserting the following:

"(3) Credits under this subsection may be transferred among manufacturers and among vehicle classes of a manufacturer in accordance with rules issued by the Secretary under paragraph (4)."; and

(2) by redesignating paragraph (4) as paragraph (4)(A) and inserting at the end the following new subparagraph:

"(B) Not later than 24 months after the date of enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary shall issue rules implementing the credit trading system authorized by paragraph (4)."

(c) CONFORMING AMENDMENTS.—Section 502(l) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(l)) is amended further—

(1) by striking "automobiles which are not passenger automobiles" and inserting "light trucks" in paragraph (2); and

(2) by striking "class of automobiles" and inserting "light trucks" in paragraph (2).

SEC. 3111. CALCULATION OF FUEL ECONOMY FOR LIGHT TRUCKS.—Section 503(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(a)(2)) is amended by adding before the period the following: "that are based upon the method required by this section for calculation of average fuel economy of passenger automobiles".

SEC. 3112. AIRBAG CREDIT FOR SMALL PASSENGER AUTOMOBILES.—(a) AIRBAG CREDIT.—Section 503(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(a)) is amended—

(1) in paragraph (1) by inserting ", subject to paragraph (4)," immediately before "be calculated"; and

(2) by adding at the end the following new paragraph:

"(4)(A) If a manufacturer manufactures small passenger automobiles which comply with Federal Motor Vehicle Safety Standard Number 208 by means of airbags for the driver seating position only or for both the driver and front seat outboard seating positions, average fuel economy for purposes of section 502 (a) and (c) shall be calculated as provided under subsection (a)(1), except that in the calculation of the sum of terms under subsection (a)(1)(B) the term applicable to any model type of small passenger automobile for which there are automobiles so equipped with airbags shall be determined by adding—

"(i) the fraction that is created by dividing the number of small passenger automobiles of such model type that are equipped with airbags for the driver seating position only, by 105 percent of the fuel economy measured for such model type,

"(ii) the fraction that is created by dividing the number of small passenger automobiles of such model type that are equipped with airbags for both the driver and outboard front seating positions, by 110 percent of the fuel economy measured for such model type, and

"(iii) the fraction that is created by dividing the number of small passenger automobiles of such model type that are not so equipped, by the fuel economy measured for such model type.

"(B) For purposes of this paragraph, the term 'small passenger automobile' means a passenger automobile (i) with a wheel base of less than 100 inches, or with a curb weight of 2,750 pounds or less, and (ii) whose measured fuel economy is at least 35 miles per gallon."

(b) CONFORMING AMENDMENT.—Section 502(e) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(e)) as amended by section 3107 of this Act is amended further by adding at the end the following new paragraph:

"(3) In determining maximum feasible average fuel economy, the Secretary shall not consider the alternative calculation for airbag-equipped passenger automobiles under section 503(a)(4)."

SEC. 3113. EXPLANATORY BOOKLET DISTRIBUTED BY SECRETARY OF ENERGY.—(a) **MINIMUM NUMBER OF COPIES DISTRIBUTED.**—Paragraph (1) of section 506(b) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006(b)) is amended by adding at the end the following new sentence: "During the 12-month period beginning on the first day of the first month after the date of enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary of Energy shall distribute no less than 100 booklets each year to each dealer and shall distribute as many in addition to 100 booklets as are reasonably requested by dealers from time to time."

(b) **TECHNICAL AMENDMENTS.**—(1) Section 506(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006(b)(1)) is amended further by striking "Administrator of the Federal Energy Administration" and inserting "Secretary of Energy".

(2) Section 506(e) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006(e)) is amended by striking "Federal Energy Administrator" and inserting "Secretary of Energy".

SEC. 3114. EXCESSIVE FUEL CONSUMPTION FEE.—The Motor Vehicle Information and Cost Savings Act is amended by striking section 507 (15 U.S.C. 2007) and inserting the following:

"EXCESSIVE FUEL CONSUMPTION FEE

"SEC. 507. (a) If the average fuel economy calculations reported by the EPA Administrator to the Secretary under section 503(d) indicate that the average fuel economy of any manufacturer does not meet the applicable average fuel economy standards established under section 502(a), (b), or (c), the Secretary shall assess the manufacturer an excessive fuel consumption fee in an amount determined under section 508.

"(b) The amount of the fee shall be assessed by the Secretary by written notice.

"(c)(1) Not later than 30 days after a determination by the Secretary under subsection (a) that a manufacturer has failed to meet any applicable average fuel economy standard under section 502, such manufacturer may apply to the Federal Trade Commission for a certification under this subsection. If the manufacturer shows and the Federal Trade Commission determines that reduction of the fee which the Secretary shall otherwise assess is necessary to prevent a substantial lessening of competition in that segment of the automobile industry subject to the standard with respect to which such fee is assessed, the Commission shall so certify. The certification shall specify the maximum amount that such fee may be reduced. To the maximum extent practicable, the Commission shall render a decision with respect to an application under this subsection not later than 90 days after the application is filed with the Commission. A proceeding under this subsection shall not have the effect of delaying the manufacturer's liability under this section for a fee for more than 90 days after such application is filed, but any payment made before a decision of the Commission under this subsection becomes final shall be paid to the court in which

the fee is collected, and shall (except as otherwise provided in paragraph (2)) be held by such court, until 90 days after such decision becomes final (at which time it shall be paid into the general fund of the Treasury).

“(2) Whenever a fee has been assessed and collected from a manufacturer under this section, and is being held by a court in accordance with paragraph (1), and the Secretary subsequently determines to reduce such fee pursuant to section 508(c), the Secretary shall direct the court to remit the appropriate amount of the fee to such manufacturer.

“(d)(1) Any manufacturer assessed a fee under this section may obtain review of a determination (i) of the Secretary to assess such fee or (ii) of the Federal Trade Commission under subsection (c) in the United States Court of Appeals for the District of Columbia Circuit, or for any circuit wherein the manufacturer resides or has his principal place of business. Such review may be obtained by filing a notice of appeal in such court within 30 days after the date of such determination, and by simultaneously sending a copy of such notice by certified mail to the Secretary or the Federal Trade Commission, as the case may be. The Secretary or the Commission, as the case may be, shall promptly file in such court a certified copy of the record upon which such determination was made. Any such determination shall be reviewed in accordance with chapter 7 of title 5, United States Code.

“(2) If any manufacturer fails to pay a fee after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Attorney General shall recover the amount for which the manufacturer is liable in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order assessing the fee shall not be subject to review.

“(e) A claim of the United States for a fee assessed against a manufacturer under this section shall, in the case of the bankruptcy or insolvency of such manufacturer, be subordinate to any claim of a creditor of such manufacturer which arises from an extension of credit before the date on which the judgment in any collection action under this section becomes final (without regard to subsection (d)).”

SEC. 3115. AMOUNT OF THE EXCESSIVE FUEL CONSUMPTION FEE.—Subsections (a), (b), (c), and (d) of section 508 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008(a)–(d)) are amended to read:

“AMOUNT OF THE EXCESSIVE FUEL CONSUMPTION FEE

“SEC. 508. (a)(1) The Secretary shall determine the amount of the excessive fuel consumption fee to be assessed under section 507 with respect to passenger automobiles manufactured in any model year by multiplying the base fee provided in subsection (b) by (i) the number of tenths of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer during such model year is exceeded by the applicable average fuel economy standard established under section 502 (a) or (c), multiplied by the number of passenger automobiles manufac-

tured by such manufacturer during such model year, reduced (at the election of the manufacturer) by (ii) credits available under section 502(l) for such model year.

"(2) The Secretary shall determine the amount of the excessive fuel consumption fee to be assessed under section 507 with respect to light trucks manufactured in any model year by multiplying the base fee provided in subsection (b) by (i) the number of tenths of a mile per gallon by which the applicable average fuel economy standard exceeds the average fuel economy of the light trucks manufactured by such manufacturer during such model year, multiplied by the number of light trucks to which such standard applies manufactured by such manufacturer during such model year, reduced (at the election of the manufacturer) by (ii) credits available under section 502(l) for such model year.

"(b) For purposes of calculating the amount of any civil penalty under this section, the amount of the base fee shall be—

"For model years:

"Prior to 1993	\$5.00
"1993	\$10.00
"1996	\$20.00
"1997 and thereafter	The amount of the fee applicable in the prior model year as adjusted in accordance with the annual implicit price deflator for the gross national product during such model year.

"(c) The Secretary shall have the discretion to reduce the amount of the fee calculated under this section only to the extent—

"(1) necessary to prevent the insolvency or bankruptcy of the manufacturer,

"(2) such manufacturer shows that its failure to meet the standards of section 502 resulted from an act of God, a strike, or a fire, or

"(3) the Federal Trade Commission has certified that reduction of such fee is necessary to prevent a substantial lessening of competition, as determined under section 507(c).

"(d)(1)(A) The Secretary shall, by rule in accordance with the provisions of this subsection and subsection (e), substitute a higher amount for the amount of the base fee which would be used to calculate the fee under subsection (a) in the absence of such rule, if the Secretary finds that—

"(i) the additional amount of the fee which may be imposed under such rule will result in, or substantially further, substantial energy conservation for automobiles in future model years for which such higher fee may be imposed; and

"(ii) subject to subparagraph (B), such additional amount of fee will not result in substantial deleterious impacts on the economy of the United States or any State or region of any State.

"(B) Any findings under subparagraph (A)(ii) may be made only if the Secretary finds that it is likely that—

"(i) such additional amount of fee will not cause a significant increase in unemployment in any State or region thereof;

"(ii) such additional amount will not adversely affect competition; and

"(iii) such additional amount will not cause a significant increase in automobile imports.

"(2) Any rule under paragraph (1) may not provide that the amount per tenth of a mile per gallon used to calculate the fee under subsection (a) be less than the base fee or more than twice the base fee provided by subsection (b)."

SEC. 3116. ESTABLISHMENT OF THE EXCESSIVE FUEL CONSUMPTION FUND.—Section 508 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008) is amended further by adding at the end the following new subsection:

"(f)(1) There is hereby established in the Treasury of the United States a separate fund, to be known as the Excessive Fuel Consumption Fund. The Fund shall consist of all fees collected by the Secretary under this section.

"(2) Subject to appropriation, the Secretary of Energy may make expenditures from the Fund for purposes of—

"(A) providing financial assistance to the States in accordance with section 514; and

"(B) funding other energy conservation programs, to the extent that the amount available in the Fund exceeds the amount needed under subparagraph (A).

"(3) The Secretary of the Treasury shall hold the Fund and, after consulting with the Secretary of Transportation and the Secretary of Energy, shall report annually to the Congress on the financial condition and operations of the Fund during the preceding fiscal year. The budget of the Fund shall be included in the Budget of the United States Government."

SEC. 3117. SCRAPPAGE OF OLDER VEHICLES.—The Motor Vehicle Information and Cost Savings Act is amended further by adding at the end thereof the following new section:

"SCRAPPAGE OF OLDER VEHICLES

"SEC. 514. (a) The Secretary of Energy shall provide financial assistance to State programs encouraging the voluntary removal from use and the marketplace pre-1980 model year automobiles.

"(b)(1) Within 180 days after the enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary of Energy, after consulting with the EPA Administrator, shall adopt rules necessary to review and approve State programs that qualify for financial assistance under subsection (a).

"(2) Any rules adopted by the Secretary of Energy under paragraph (1) shall require that to qualify for Federal assistance under subsection (a) at least 50 percent of the cost of the program be paid for from State or private funds.

"(c) The Secretary of Energy is authorized, subject to appropriation, to make expenditures from the Excessive Fuel Consumption Fund for purposes of this section."

SEC. 3118. TECHNICAL AND CONFORMING AMENDMENTS.—(a) DESIGNATION OF THE EPA ADMINISTRATOR.—Section 502 (g)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(g)(1)) is amended by striking "Environmental Protection Agency" and inserting "EPA".

(b) **ELIMINATION OF THE SECRETARY'S ADJUSTMENT AUTHORITY.**—Section 502(l)(1)(B) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002 (l)(1)(B)) is amended by striking “any adjustment under subsection (d) or”.

(c) **DESIGNATION OF THE ENERGY AND COMMERCE COMMITTEE.**—Section 503(b)(3)(D)(ii)(II) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(b)(3)(D)(ii)(II)) is amended by striking “Interstate and Foreign Commerce” and inserting “Energy and Commerce”.

(d) **LEGISLATIVE VETO.**—Section 504(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2004(a)) is amended by striking “(or in the case of an amendment submitted to each House of the Congress under section 502(a)(4), at any time prior to 60 days after the expiration of the 60-day period specified in section 502(a)(5))”.

TITLE IV—FLEETS AND ALTERNATIVE FUELS

Subtitle A—Alternative Fuel Fleets

SEC. 4101. **DEFINITIONS.**—For the purposes of this subtitle—

(1) “alternative fuel” means methanol, ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, ethanol, or other alcohol with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; and electricity;

(2) “alternative fuel vehicle” means a motor vehicle that—
 (A) operates solely on alternative fuel; or
 (B) is a flexi-fueled vehicle;

(3) “diesel truck” means a truck that has a gross vehicle weight over 8,500 pounds and under 26,000 pounds and is powered by diesel fuel;

(4) “Federal agency” means any executive department, military department, government corporation, independent establishment, executive agency, the United States Postal Service, the Congress, and the courts of the United States;

(5) “fleet” means a number of motor vehicles that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by a Federal agency, State, or person. This term does not include—

(A) motor vehicles held for daily lease or rental to the general public;

(B) motor vehicles held for sale by motor vehicle dealers, including demonstration vehicles;

(C) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(D) law enforcement vehicles;

(E) emergency vehicles;

(F) military vehicles that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons;

(G) non-road vehicles, including farm and construction vehicles; or

- (H) vehicles that under normal operations are garaged at a personal residence at night;
- (6) "flexi-fueled vehicle" means a motor vehicle that can operate on alternative and non-alternative fuel;

(7) "motor vehicle" means—

(A) any four-wheel passenger automobile, as the term "passenger automobile" is defined in section 501(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001(2));

(B) any truck with a gross vehicle weight up to 26,000 pounds, including "light trucks," as defined in section 501(15) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001(15)) and "diesel trucks" as defined in this section;

(C) and any bus designed to transport more than ten persons;

(8) "person" means—

(A) any individual, corporation, partnership, or association;

(B) any municipality or political subdivision of a State;

(9) "covered person" means a person that owns, operates, leases, or otherwise controls—

(A) a fleet that contains at least 20 motor vehicles that are centrally fueled or capable of being centrally fueled, and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of 250,000 or more; and

(B) at least 50 motor vehicles within the United States; and

(10) "State" means a State, any agency of a State (but not a municipality or political subdivision of a State), or the District of Columbia.

SEC. 4102. FEDERAL FLEETS.—(a) PURCHASE REQUIREMENTS.—When any Federal agency purchases, leases, or otherwise acquires vehicles for a Federal fleet, in the years specified in this section, the following percentage of the vehicles purchased, leased, or otherwise acquired shall be alternative fuel vehicles in the respective years—

- (1) in 1995, 10 percent;
- (2) in 1996, 15 percent;
- (3) in 1997, 25 percent;
- (4) in 1998, 50 percent;
- (5) in 1999, 75 percent; and
- (6) in 2000 and each year thereafter, 90 percent.

(b) PROGRAM COORDINATION.—The Secretary shall work with the Administrator of General Services and the head of each Federal agency to plan effective coordination and cooperation by Federal agencies in the purchase, use, and refueling of alternative fuel vehicles acquired under this section or other provisions of law.

(c) REFUELING.—The Administrator of General Services shall, to the maximum extent practicable, arrange for the fueling of alternative fuel vehicles acquired under this section at commercial fuel-

ing facilities that are open to the public and offer alternative fuels for sale to the public.

(d) **COST OF VEHICLES TO FEDERAL AGENCY.**—Notwithstanding the provisions of section 211 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 491), the Administrator of General Services shall not include the incremental costs of alternative fuel vehicles in the amount to be reimbursed by Federal agencies if the Administrator determines that appropriations provided pursuant to this section are sufficient to provide for the incremental cost of such vehicles over the cost of comparable conventional vehicles.

(e) **LIMITATIONS ON APPROPRIATIONS.**—Funds appropriated pursuant to the authorization under this section shall be applicable only—

(1) to the portion of the cost of acquisition, maintenance, and operation of vehicles acquired under this paragraph which exceeds the cost of acquisition, maintenance, and operation of comparable conventional vehicles;

(2) to the portion of the costs of fuel storage and dispensing equipment attributable to such vehicles which exceeds the costs for such purposes required for conventional vehicles; and

(3) to the portion of the costs of acquisition of alternative fuel vehicles which represents a reduction in revenue from the disposal of such vehicles as compared to revenue resulting from the disposal of comparable conventional vehicles.

(f) **VEHICLE COSTS.**—The incremental cost of vehicles acquired under this section over the cost of comparable conventional vehicles shall not be applied to any calculation with respect to a limitation under law on the maximum cost of individual vehicles which may be acquired by the United States.

(g) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Such sums as are appropriated for the Administrator of General Services pursuant to the authorization under this section shall be added to the General Supply Fund established in section 109 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 756).

SEC. 4103. STATE FLEETS.—When any State that owns, operates, leases, or otherwise controls at least 50 motor vehicles purchases, leases, or otherwise acquires motor vehicles for use in a fleet that contains at least 20 motor vehicles that are centrally fueled or capable of being centrally fueled and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of Census, with a 1980 population of 250,000 or more, the following percentage of the vehicles purchased, leased, or otherwise acquired for such fleet in the years specified shall be alternative fuel vehicles—

(1) in 1995, 10 percent;

(2) in 1996, 15 percent;

(3) in 1997, 25 percent;

(4) in 1998, 50 percent;

(5) in 1999, 75 percent; and

(6) in 2000 and each year thereafter, 90 percent.

SEC. 4104. PRIVATE AND MUNICIPAL FLEETS.—When any covered person that owns, operates, leases, or otherwise controls at least 50

motor vehicles purchases, leases, or otherwise acquires vehicles for a fleet that contains at least 20 motor vehicles that are centrally fueled or capable of being centrally fueled and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of Census, with a 1980 population of 250,000 or more, the following percentage of the vehicles purchased, leased, or otherwise acquired for such fleet in the years specified shall be alternative fuel vehicles—

- (1) in 1998, 30 percent;
- (2) in 1999, 50 percent; and
- (3) in 2000 and each year thereafter, 70 percent.

SEC. 4105. RULES OF GENERAL APPLICABILITY.—(a) **TREATMENT OF FRACTIONS.**—If the number of vehicles purchased, leased, or otherwise acquired by a Federal agency, State, or covered person in any year when multiplied by the percentage specified in section 4102, 4103, or 4104 contains a fraction, the number of vehicles required to be alternative fuel vehicles shall be increased to the next whole number.

(b) **FUEL USE REQUIREMENT.**—The vehicles purchased pursuant to section 4102, 4103, or 4104 shall be operated solely on alternative fuels except when operating in an area where the appropriate alternative fuel is unavailable.

(c) **DIESEL TRUCKS.**—Any Federal agency, State, or covered person that operates a fleet that is subject to the requirements of section 4102, 4103, or 4104, respectively, and contains one or more diesel trucks may purchase, lease, or otherwise acquire diesel trucks after 1994 in proportion (relative to the total number of motor vehicles) to the number of diesel trucks in the agency, State, or person's fleet that is subject to the requirements of section 4102, 4103, or 4104 on the date of enactment of this subtitle, notwithstanding such sections.

(d) **DELAYED PURCHASE OPTION.**—Any covered person subject to section 4104 may postpone the acquisition of alternative fuel vehicles required to be acquired in 1998 and 1999, but after 1999, such person may only acquire alternative fuel vehicles until such person acquires a cumulative number of such vehicles which exceeds 150 percent of the cumulative number of alternative fuel vehicle purchases that would have been needed to meet the 1998 and 1999 requirements of section 4104. Such acquisitions shall be in addition to any acquisition requirements under section 4104 for years after 1999.

SEC. 4106. EXEMPTIONS.—(a) **VEHICLE AND FUEL AVAILABILITY.**—The Secretary shall exempt any Federal agency, State, or covered person from the requirements of section 4102, 4103, or 4104, respectively, in whole or in part, if the Secretary determines that:

(1) alternative fuel vehicles meeting the requirements of such Federal agency, State, or person are not available for purchase, lease, or acquisition by other means; or

(2)(A) commercial alternative fuel refueling facilities are not available to the Federal agency, State, or person in the area in which the vehicles are operated; and

(B) providing an alternative fuel refueling facility for such agency, State, or person's alternative fuel vehicles would be economically impracticable.

(b) **DURATION OF EXEMPTIONS.**—An exemption granted by the Secretary under subsection (a) shall be for an initial period of no more than 12 months and shall be renewable for additional periods of no more than 12 months.

SEC. 4107. VEHICLE CONVERSIONS.—The requirements of sections 4102, 4103, and 4104 may be met through the conversion of existing or new gasoline or diesel-powered vehicles to alternative fuel vehicles. For purposes of such sections, the conversion of a vehicle to an alternative fuel vehicle shall be treated as the purchase of an alternative fuel vehicle. Nothing in this subtitle shall be construed to require any Federal agency, State, or covered person to convert existing or new gasoline or diesel-powered vehicles to alternative fuel vehicles or to purchase converted vehicles.

SEC. 4108. CREDITS.—(a) **IN GENERAL.**—The Secretary shall allocate a credit to a State or covered person that is subject to the requirements of section 4103 or 4104, respectively, if that State or person purchases an alternative fuel vehicle in excess of the number that State or person is required to purchase under section 4103 or 4104 or purchases an alternative fuel vehicle before the date that State or person is required to purchase an alternative fuel vehicle under such section.

(b) **ALLOCATION.**—In allocating credits under subsection (a), the Secretary shall allocate one credit for each alternative fuel vehicle the State or covered person purchases that exceeds the number of alternative fuel vehicles that State or person is required to purchase under section 4103 or 4104 or that is purchased before the date that State or person is required to purchase an alternative fuel vehicle under such section. In the event that a vehicle is purchased before the date otherwise required, the Secretary shall allocate one credit per vehicle for each year the vehicle is purchased before the required date. The credit shall be allocated for the same type vehicle as the excess vehicle or earlier purchased vehicle.

(c) **USE OF CREDITS.**—At the request of a State or covered person allocated a credit under this section, the Secretary shall treat the credit as the purchase of one alternative fuel vehicle of the type for which the credit is allocated in the year designated by that State or person when determining whether that State or person has complied with this subtitle in the year designated. A credit may be counted toward compliance for only one year.

(d) **TRANSFERABILITY.**—A State or covered person allocated a credit under this section or to whom a credit is transferred under this section, may transfer freely the credit to another State or person who is required to comply with this subtitle. At the request of the State or person to whom a credit is transferred, the Secretary shall treat the transferred credit as the purchase of one alternative fuel vehicle of the type for which the credit is allocated in the year designated by the State or person to whom the credit is transferred when determining whether that State or person has complied with this subtitle in the year designated. A transferred credit may be counted toward compliance for only one year.

SEC. 4109. REPORTS.—The Secretary may require a Federal agency, State, or covered person to file with the Secretary the reports the Secretary determines necessary to implement this subtitle.

SEC. 4110. ENFORCEMENT.—(a) CIVIL PENALTIES.—A State or covered person who violates a requirement or prohibition of section 4103 or 4104, respectively, or 4105(b) is subject to a civil penalty of not more than \$2,500 per violation. Each month in which a violation occurs constitutes a separate violation, unless the violator establishes that the vehicle necessary to comply with this subtitle could not be purchased, leased, or otherwise acquired in that month. The first month of a violation of the yearly acquisition requirements of section 4103 or 4104 is the month in which a State or person purchases, leases, or otherwise acquires vehicles that result in noncompliance with the yearly alternative fuel vehicle purchase requirement under that section. Each month in which compliance has not been achieved after the first month is a separate violation.

(b) CIVIL ACTIONS.—The Secretary may request the Attorney General to commence a civil action for a permanent or temporary injunction or to assess and recover any civil penalty under subsection (a) of this section. An action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has his principal place of business. The court in which the action has been brought may restrain a violation, require compliance, assess a civil penalty, collect any noncompliance assessment and nonpayment penalty owed the United States, and award any other appropriate relief. In such an action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) MITIGATION OF PENALTIES.—In the determining the amount of a penalty to be assessed under this section, the court shall take into consideration, in addition to other factors justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

SEC. 4111. IMPLEMENTATION.—(a) REGULATIONS.—Within 180 days after the date of enactment of this subtitle the Secretary shall issue regulations to implement this subtitle. Such regulations shall include measures to ensure that Federal agencies, States, and covered persons comply with the requirements of sections 4102, 4103, and 4104, respectively, and the criteria by which the Secretary will determine whether to exempt agencies, States, and covered persons from such requirements under section 4105.

(b) DELEGATION TO STATES.—The Secretary may delegate the administration and enforcement of this subtitle within any State to the Governor of such State if—

(1) the Governor certifies that the State has a program to administer and enforce the subtitle; and

(2) the Secretary finds that the State program is in accordance with the requirements of the subtitle.

(c) FINANCIAL ASSISTANCE.—There is authorized to be appropriated not more than \$20,000,000 to remain available until expended for purposes of providing financial assistance to States to which the

Secretary delegates administration and enforcement of this subtitle.

Subtitle B—Electric and Electric-Hybrid Vehicle Demonstration, Infrastructure, Development, and Conforming Amendments

PART A—ELECTRIC AND ELECTRIC-HYBRID VEHICLE DEMONSTRATION

SEC. 4201. SHORT TITLE.—This part may be cited as the “Electric and Electric-Hybrid Vehicle Demonstration Act”.

SEC. 4202. DEFINITIONS.—For the purposes of this part, the term—

(1) “associated equipment” means that equipment necessary for the regeneration, refueling or recharging of batteries or other forms of electric energy used to power an electric vehicle and, in the case of electric-hybrid vehicles, that equipment necessary for the application or use of the non-electric source of power in such vehicles;

(2) “comparable conventionally-fueled vehicle” means a commercially available vehicle powered by an internal combustion engine that utilizes gasoline or diesel fuel as its fuel source and provides passenger capacity or payload capacity comparable or similar to an electric vehicle or electric hybrid vehicle, as determined by the Secretary;

(3) “discount payment” means that discount from the electric vehicle suggested retail price provided to the user of an electric vehicle or electric-hybrid vehicle as determined pursuant to section 4205 of this part;

(4) “electric vehicle” means a vehicle powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electric current;

(5) “electric-hybrid vehicle” means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other source of electric current and also relies on a non-electrical source of power;

(6) “electric vehicle suggested retail price” or “electric-hybrid vehicle suggested retail price” means the price (including any additions to the price of such vehicle added as a result of delivery to the point of use of such vehicles) of an electric vehicle or electric-hybrid vehicle set forth in a cooperative agreement under section 4203(b), not adjusted to reflect any discount payment that may be available under this part;

(7) “eligible metropolitan area” means—

(A) any ozone non-attainment area classified under subpart 2 of part D of title I of the Clean Air Act, as amended, as Serious, Severe, or Extreme as of the date of enactment of this part;

(B) any carbon monoxide nonattainment area with a carbon monoxide design value at or above 16.0 parts per million based on data available as of the date of enactment of this part, but does not include carbon monoxide nonattainment areas in which mobile sources do not contribute significantly to carbon monoxide exceedences; or

(C) any other metropolitan statistical area with a 1980 population of 250,000 or more that has been designated by a proposer and the Secretary for a demonstration project under this part;

(8) "manufacturer" means a person or entity that produces an electric vehicle or electric-hybrid vehicle and is capable, if determined to be by the Secretary, of providing service and parts for such vehicle for a period of five years or more;

(9) "proposer" means a person or entity that submits a proposal to conduct a demonstration project under the program authorized by this part and may include a unit of State or local government;

(10) "retail price differential" means the difference between the comparable conventionally-fueled vehicle suggested retail price and the electric vehicle or electric-hybrid vehicle suggested retail price;

(11) "suggested retail price" means the price (including any additions to the price of such vehicle added as a result of delivery to the point of use of such vehicle) of a commercially available conventionally-fueled vehicle, as determined by the manufacturer's established retail price, not adjusted to reflect any reductions in such price discounts that may be available; and

(12) "user" means a person or entity that purchases or leases an electric vehicle or electric-hybrid vehicle, including fleet operators.

SEC. 4203. PROGRAM AND SOLICITATION.—(a) **PROGRAM.**—The Secretary shall conduct a program to demonstrate electric vehicles, electric-hybrid vehicles and the associated equipment of such vehicles, in consultation with the Electric and Hybrid Vehicle Program Site Operators, vehicle manufacturers, the electric utility industry, and such other persons as the Secretary deems appropriate. Such program shall be structured to evaluate the performance of such vehicles in field operation, including fleet operation, and evaluate the necessary supporting infrastructure for electric and electric-hybrid vehicle commercialization.

(b) **SOLICITATION.**—(1) Not later than one year after the date of enactment of this part, the Secretary shall solicit proposals to demonstrate electric vehicles, electric-hybrid vehicles or such vehicles and associated equipment in one or more eligible metropolitan areas.

(2) The solicitation shall require the proposer to include in the proposal a description of the proposal including the manufacturer or manufacturers of the electric or electric-hybrid vehicles; the intended users of the vehicles; the eligible metropolitan area or areas involved; the number of vehicles to be demonstrated and their type, characteristics, and life-cycle costs; the retail price differential; the proposed discount payment; the contributions of State or local governments and other persons to the demonstration project; the type of associated equipment to be demonstrated; and any other information the Secretary requires to make selections under section 4204. If the proposal includes a lease arrangement, the proposal shall indicate the terms of such lease arrangement for the electric vehicles, electric-hybrid vehicles or associated equipment.

(c) **ADDITIONAL SOLICITATIONS.**—The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out the purposes of this part.

SEC. 4204. SELECTION OF PROPOSALS.—(a) **SELECTION.**—(1) The Secretary, in consultation with the Secretary of Transportation, the Secretary of Commerce and the Administrator of the Environmental Protection Agency, may, not later than 120 days after receipt of proposals under section 4203, select at least one, but not more than ten, proposals for negotiation of cooperative agreements to receive financial assistance under section 4205.

(2) Any proposal selected for negotiation under paragraph (1) must satisfy the limitations set forth in section 4205(c).

(3) If the Secretary intends to enter into four or more cooperative agreements, at least one such cooperative agreement shall be for a demonstration project located in an eligible metropolitan area referred to in section 4202(7)(C) and which is not located in a nonattainment area referred to in sections 4202(7)(A) or (B).

(b) **CONSIDERATION.**—In selecting a proposal and in negotiating a cooperative agreement under this section, the Secretary shall consider—

(1) the ability of a proposer to undertake and complete the proposed demonstration project;

(2) the ability of a manufacturer, directly or indirectly, or in combination with the proposer, to develop, assist in the demonstration of, manufacture, distribute, sell or lease and provide service for, including the ability to provide warranties and to assure the availability of all parts, those electric vehicles or electric-hybrid vehicles that are proposed to be included in the demonstration project;

(3) the geographic and climatic diversity of the eligible metropolitan area or areas in which the demonstration project is to be undertaken when compared with other proposals or other selected demonstration projects;

(4) the long-term technical and competitive viability of the electric and electric-hybrid vehicle, and the ability of the manufacturer of such vehicles to make and incorporate subsequent advancements, cost reductions, modifications, and technology improvements;

(5) the electric vehicle or electric-hybrid vehicle suggested retail price of the vehicles to be included in the demonstration project, the comparable conventionally-fueled vehicle suggested retail price, the proposed discount payment, and in the case of a demonstration project that includes a lease arrangement, the terms of such arrangement for the vehicle or associated equipment;

(6) the extent of involvement of State or local government and other persons in the demonstration project;

(7) whether the involvement of State or local government or other persons in the demonstration project (A) will permit a reduction of the Federal cost share per vehicle or (B) will otherwise be used to leverage the Federal contribution to be provided among a greater number of vehicles; and

(8) other criteria as the Secretary deems appropriate.

(c) **CONDITIONS.**—The Secretary shall include in any cooperative agreement under this section provisions intended to assure that—

(1) the vehicle or vehicles will be used primarily in the eligible metropolitan area or areas identified in the proposal and set forth in the final agreement made with the Secretary;

(2) the number of vehicles to be included in the demonstration project shall be no less than 50 vehicles, except that the Secretary—

(A) may select and enter into a cooperative agreement for a demonstration project with fewer than 50 vehicles if the Secretary determines that selection of such a proposal will ensure that there is geographic or climatic diversity of the proposals selected and that an adequate demonstration to accelerate the development and use of vehicles can be undertaken with fewer than 50 vehicles; and

(B) may permit a group of such vehicles to be used in an area outside such eligible metropolitan area or areas identified in such proposal if the Secretary determines that such proposal would further the purposes of this part.

(3) as a part of the demonstration project, the proposer shall seek to obtain from the user or users of the vehicles and to provide to the manufacturer information regarding operation, maintenance, and useability of the vehicle for five years after purchase or during the lease period; and

(4) the proposer shall provide such information regarding operation, maintenance and use of vehicles as the Secretary may request during the period of the demonstration project.

(d) **ADDITIONAL DEMONSTRATIONS.**—The Secretary may enter into more than ten cooperative agreements under this section, if the Secretary determines that the total amount of available funds is not likely to be otherwise utilized.

SEC. 4205. DISCOUNT PAYMENTS TO USERS.—(a) **CERTIFICATION.**—The Secretary shall provide a discount payment to a proposer for reimbursement of the discount provided to the user, if the proposer certifies to the Secretary, in such form and in such manner and time as may be required by the Secretary, that—

(1) the electric vehicle or electric-hybrid vehicle has been purchased or leased by a user in accordance with the terms and conditions of the cooperative agreement referred to in section 4204; and

(2) the proposer has provided to the user a discount payment from the electric vehicle or electric-hybrid vehicle suggested retail price in accordance with the terms and conditions for the discount payment in the cooperative agreement under section 4204.

(b) **PAYMENT.**—Not later than 30 days after receipt from the proposer of certification that the Secretary determines satisfies subsection (a), the Secretary shall pay to the proposer the full amount of the discount payment.

(c)(1) **RESTRICTIONS ON DISCOUNT PAYMENTS.**—The discount payment shall be no greater than the retail price differential or the price of the comparable conventionally-fueled vehicle, whichever is the lesser.

(2) The actual purchase price of the vehicle, adjusted to reflect the discount payment and any additional reduction in the actual purchase price of the vehicle that may result from contributions to a purchase price reduction provided by other parties, may not be less than the manufacturer's suggested retail price of a comparable conventionally-fueled vehicle.

(3) The maximum Federal share of the discount payment that may be provided to reimburse a proposer for a discount payment provided to a user shall be no greater than \$10,000 per electric vehicle or electric-hybrid vehicle.

(4) The aggregate discount payments paid to a proposer under this part may not exceed \$3,000,000.

(d) LEASE AGREEMENTS.—For purposes of the discount payment, in the case of an electric vehicle or electric-hybrid vehicle included in a demonstration project that is the subject of a lease agreement, the Secretary shall provide a rebate in accordance with the terms of the cooperative agreement.

SEC. 4206. COST-SHARING.—(a) The Secretary shall require at least 50 percent of the costs directly and specifically related to any cooperative agreement under this part, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(b) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under subsection (a) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this part.

SEC. 4207. REPORTS TO CONGRESS.—The Secretary shall report annually to the Committee on Energy and Natural Resources of the United States Senate and the United States House of Representatives on the progress being made, through the cooperative agreements under this part, to accelerate the development and use of electric vehicles and electric-hybrid vehicles.

SEC. 4208. AUTHORIZATION.—There is authorized to be appropriated to the Secretary for fiscal years 1992, 1993 and 1994 such sums as may be necessary to carry out the purposes of this part, to remain available until expended.

PART B—ELECTRIC AND ELECTRIC-HYBRID VEHICLE INFRASTRUCTURE DEVELOPMENT

SEC. 4211. SHORT TITLE.—This part may be cited as the "Electric Vehicle and Electric-Hybrid Infrastructure Development Act".

SEC. 4212. DEFINITIONS.—For purposes of this part, the term—

(1) "infrastructure" includes, but is not limited to, those support and maintenance services and facilities, electricity delivery mechanisms and methods, treatment of investment in electric vehicles and associated equipment, consumer education programs, safety and health procedures, and battery availability, replacement, recycling and disposal, that may be required to enable electric utilities, automobile manufacturers and others, to support the operation, maintenance and utilization of electric vehicles, electric-hybrid vehicles, and associated equipment;

(2) "non-Federal person" means an entity not part of the Federal Government that is organized under the laws of the United States and located in the United States, the controlling interest (as defined by the Secretary) of which is held by United States nationals or permanent resident aliens, including—

- (A) a for-profit business;
- (B) a private foundation;
- (C) a nonprofit organization such as a university;
- (D) a trade or professional society; and
- (E) a unit of State or local government.

(3) "associated equipment" means that equipment necessary for the regeneration, refueling or recharging of batteries or other forms of electrical energy used to power an electric vehicle and, in the case of electric-hybrid vehicles, the non-electric source of energy;

(4) "electric vehicle" means a vehicle powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current; and

(5) "electric-hybrid vehicle" means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other source of electric current but also relies on a non-electrical source of power.

SEC. 4213. DATA ACQUISITION TO SUPPORT INFRASTRUCTURE DEVELOPMENT AND MARKETS FOR USE OF ELECTRIC VEHICLES AND ELECTRIC-HYBRID VEHICLES.—(a) GENERAL.—Not later than 180 days after the date of enactment of this part, the Secretary, in consultation with appropriate State, regional and local authorities, shall establish a program for the collection and dissemination of information and data which would be useful to persons seeking to manufacture, sell, lease, own or operate electric vehicles and electric-hybrid vehicles. Such information and data—

(1) shall be sufficient to evaluate—

(A) the degree to which the availability of energy and fuel supplies may constrain the introduction of electric vehicles or electric-hybrid vehicles; and

(B) the electric vehicle or electric-hybrid vehicle trips made daily, miles driven per trip, projections as to the number of trips that could be accomplished in combination with mass transit so as to conserve energy; and

(2) may include other appropriate demographic and consumer preferences information necessary to make the evaluation under paragraph (1).

(b) CONSULTATION BY THE SECRETARY.—The Secretary shall consult with interested persons including, but not limited to, vehicle manufacturers, fleet operators, public utilities and State or local governmental entities, to determine the types of information and data to be collected and analyzed pursuant to the program authorized by subsection (a).

SEC. 4214. STATE INFRASTRUCTURE DEVELOPMENT PLANS.—(a) GUIDELINES.—(1) Within 180 days after the date of enactment of this part, the Secretary shall issue guidelines for use by States and local governmental entities to develop comprehensive infrastructure plans to support the deployment of electric vehicles and elec-

tric-hybrid vehicles. Such guidelines shall include sufficient information to help States to evaluate—

(A) the availability of the necessary infrastructure to provide electricity and other forms of energy in the quantities and at the locations required to support operation of electric vehicles or electric-hybrid vehicles;

(B) the development of electric vehicle and electric-hybrid vehicle incentives and implementation programs designed to accelerate the introduction and use of such vehicles; and

(C) such studies that may be conducted or information that may be acquired with respect to how the production, development, or use of electric vehicles and electric-hybrid vehicles are likely to affect the more efficient use of energy resources and thereby enhance national energy security.

(2) Such guidelines also shall address the development, modification, and implementation of State infrastructure plans and shall describe those program elements, as described in subsection (c) to be addressed in such plans.

(b) **TECHNICAL AND FINANCIAL ASSISTANCE.**—(1) The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall offer the Governor of each State, within 120 days of the date of issuance of the guidelines under subsection (a), the opportunity to request technical and financial assistance under subsection (c) for the formulation of a comprehensive infrastructure plan for such State in conformance with the guidelines issued under subsection (a). Such request shall include a determination by the Governor that—

(A) electricity and other forms of energy are likely to be available in sufficient quantities to support the introduction of electric vehicles and electric-hybrid vehicles in such State; and

(B) the introduction of electric vehicles or electric-hybrid vehicles in such State is feasible.

(2)(A) If the Secretary is satisfied that the determination of a Governor under paragraph (1) is consistent with the purposes of this part, the Secretary shall offer the Governor of such State the opportunity to submit, within 180 days after submission of the determination under paragraph (1), a comprehensive infrastructure plan for approval under subsection (c)(2).

(B) Any plan developed under subparagraph (A) shall be developed in consultation with local governmental entities and shall include—

(i) the anticipated number and schedule for introduction of electric vehicles or electric-hybrid vehicles in such State;

(ii) provisions intended to ensure that electricity and other forms of energy will be available in sufficient quantities to support the anticipated quantities and schedule for introduction of electric vehicles or electric-hybrid vehicles;

(iii) provisions designed to assure the progress toward, and achievement of, the goal of introducing substantial numbers of electric vehicles and electric-hybrid vehicles in such State by the year 2001;

(iv) a detailed description of the requirements, including the estimated cost of implementation, of the infrastructure plan; and

(v) an assessment of whether accomplishing any of the goals in this subsection would require amendment to State law or regulation.

(c) **TECHNICAL AND FINANCIAL ASSISTANCE.**—(1) Upon request of the Governor of any State who has submitted the assessment and made the determination under subsection (b), the Secretary may provide to such State—

(A) information and technical assistance, including model State laws and proposed regulations relating to electric vehicles and electric-hybrid vehicles;

(B) financial assistance for the purpose of the development of such plan; and

(C) financial assistance for the purpose of the implementation of such plan as approved by the Secretary pursuant to this section.

(2) In determining whether to approve a State infrastructure plan submitted under subsection (b)(2), and in determining the amount of Federal financial assistance, if any, to be provided to any State under this section, the Secretary shall consider:

(A) energy and environmental-related impacts of introduction and use of electric vehicles or electric-hybrid vehicles included in the proposed infrastructure plan;

(B) the availability of electricity and other forms of energy required to support varying numbers of electric vehicles or electric-hybrid vehicles;

(C) the number of electric vehicles or electric-hybrid vehicles likely to be introduced by the year 2001 and the availability of electricity and other fuels resulting from successful implementation of the plan; and

(D) such other factors as the Secretary considers appropriate.

(d) **REPORT.**—The Secretary shall report annually to the Congress, and shall furnish copies of such report to the Governor of each State participating in the program, on the operation of the program under this part.

SEC. 4215. ELECTRIC UTILITY AND OTHER INDUSTRY INFRASTRUCTURE DEVELOPMENT PROJECTS.—(a) **GENERAL.**—The Secretary shall undertake cooperative agreements with one or more non-Federal persons, including fleet operators, to provide the infrastructure necessary to support the use of electric vehicles or electric-hybrid vehicles.

(b) **SOLICITATION OF PROPOSALS.**—(1) Within one year after the date of enactment of this Act, the Secretary shall solicit proposals from non-Federal persons, including fleet operators, to carry out the purposes of this section.

(2) Within 180 days after proposals have been solicited, the Secretary shall select from among those proposals submitted under this section and thereafter enter into negotiations. If, after negotiation, the Secretary determines that a proposal meets the purposes of this section, he may enter into a cooperative agreement with the non-Federal person submitting such proposal.

(3) The Secretary shall undertake no more than five cooperative agreements under this section. The proposals to be selected by the Secretary shall, to the extent practicable, represent geographically and climatically diverse regions of the United States.

(4) The aggregate Federal financial assistance for each cooperative agreement under this part may not exceed \$3,000,000.

(c) PROPOSALS.—The infrastructure proposals under this section may address—

(1) the addition to existing facilities of the capability to service electric or electric-hybrid vehicles, and to provide or service associated equipment, as well as the installation of charging facilities where such service might be required for the use and operation of electric vehicles or electric-hybrid vehicles;

(2) the feasibility of designing rate structures, rate levels, ratemaking procedures, billing systems and financing methods, related to investment by electric utilities in infrastructure capital-related expenditures and public information programs conducted by electric utilities regarding use of electricity, the conservation of electric energy and the use of electric vehicles or electric-hybrid vehicles;

(3) the development of associated safety and health procedures; and

(4) such other requirements as the Secretary considers necessary in order to address the infrastructure needed to support the development and use of energy storage technologies, including advanced batteries, and the demonstration of electric vehicles or electric-hybrid vehicles.

SEC. 4216. COST-SHARING.—(a) The Secretary shall require at least 50 percent of the costs directly and specifically related to any cooperative agreements under this part, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(b) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under subsection (a) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this part.

SEC. 4217. COMPLIANCE WITH EXISTING LAW.—Nothing in this part shall be deemed to convey to any person, partnership, corporation, or other entity, immunity from civil or criminal liability under any antitrust law or to create defenses to actions under any antitrust law. As used in this part, "antitrust laws" means those Acts set forth in section 1 of the Clayton Act (15 U.S.C. 12), as amended.

SEC. 4218. AUTHORIZATION.—There is authorized to be appropriated to the Secretary for fiscal years 1992, 1993, and 1994, such sums as may be necessary to carry out the purposes of this part.

PART C—AMENDMENT TO THE ALTERNATIVE MOTOR FUELS ACT

SEC. 4221. AMENDMENTS TO THE ENERGY POLICY AND CONSERVATION ACT.—(a) Section 400AA(a) of the Energy Policy and Conservation Act (Public Law 94-163; 42 U.S.C. 6374 (a)(1)) is amended by striking out "or natural gas dual energy vehicles." and inserting in lieu thereof "natural gas dual energy vehicles, electric vehicles, or electric-hybrid vehicles."

(b) Section 400AA(g) of the Energy Policy and Conservation Act (Public Law 94-163; 42 U.S.C. 6374 (g)) is amended—

- (1) by striking out "and" at the end of paragraph (5);
- (2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof a semicolon; and
- (3) by adding at the end thereof the following new paragraphs:

"(7) the term 'natural gas' includes liquified petroleum gas, including propane;

"(8) the term 'electric vehicle' means a vehicle powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current; and

"(9) 'electric-hybrid vehicle' means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other source of electric current and also relies on a non-electrical source of power."

(c) Section 400AA(i) of the Energy Policy and Conservation Act (42 U.S.C. 6374(i)) is amended by adding at the end thereof the following new paragraph:

"(3) For the purposes of this section, there is authorized to be appropriated for the fiscal years 1994, 1995, and 1996 such sums as may be necessary to carry out the provisions of this section."

SEC. 4222. AMENDMENTS TO THE MOTOR VEHICLE INFORMATION AND COST SAVING ACT.—(a) Section 513(c) of the Motor Vehicle Information and Cost Savings Act (Pub. L. No. 92-513; 15 U.S.C. 2013(c)) is amended in the first sentence by inserting after "natural gas" each place it occurs the parenthetical "(including liquefied petroleum gas)".

(b) Section 513(d) of said Act (Pub. L. No. 92-513; 15 U.S.C. 2013(d)) is amended by inserting after "natural gas" the first time it occurs the following parenthetical, "(including liquefied petroleum gas)".

Subtitle C—Alternative Fuels

SEC. 4301. SHORT TITLE.—This subtitle may be cited as the "Replacement and Alternative Fuels Act of 1991".

SEC. 4302. FINDINGS.—The Congress finds and declares that—

- (1) United States national security demands that we reduce our dependency on imported oil;
- (2) domestic resources are available to substantially reduce our dependency on imported oil;
- (3) the transportation sector, currently 95 percent dependent on oil, accounts for more than 60 percent of our national oil consumption;
- (4) a comprehensive energy program, including the stimulation of the production and use of automobiles capable of using alternative fuels, is needed to reduce pollution as well as reduce our dependency on imported oil;
- (5) such program should be designed to create a positive impact on the economy, our national trade balance, and our national budget; and

(6) such program should allow market forces, within appropriate environmental parameters, to affect the selection of replacement or alternative fuels.

SEC. 4303. PURPOSES.—The purposes of this subtitle are to—

- (1) enhance energy security;
- (2) reduce air pollution;
- (3) improve our balance of trade;
- (4) reduce the budget deficit;
- (5) improve the marketability of alternative and flexible fuel vehicles; and
- (6) improve the condition of the national economy through the enhancement of the replacement fuel industry and the creation of an alternative fuel industry.

SEC. 4304. DEFINITIONS.—For purposes of this subtitle—

(1) the term “Administrator” means the Administrator of the Environmental Protection Agency;

(2) the term “alcohol” means methanol, ethanol, or other alcohol that are suitable for use by themselves or in combination with other fuels as a motor fuel;

(3) the term “conventional petroleum” means imported or domestic petroleum derived from oil wells, including stripper wells;

(4) the term “domestic” means derived from resources within the 50 States, the territories of the United States, or Canada;

(5) the term “motor fuel” means any substance suitable as a fuel for a motor vehicle, as the term “motor vehicle” is defined in section 216(2) of the Clean Air Act (42 U.S.C. 7550(2));

(6) the term “alternative fuel” means a motor fuel not designed to be mixed with gasoline, including liquefied petroleum gas, natural gas, “neat” alcohol, hydrogen, coal-derived liquid fuels, and electricity;

(7) the term “replacement fuel” means a motor fuel capable of mixing with gasoline, including alcohol and ethers or products derived from alcohol;

(8) the term “commerce” means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, traffic, transportation, exchange, or other commerce described in subparagraph (A); and

(9) the term “provider” means—

(A) any person engaged in the refining of crude oil to produce motor fuel;

(B) any importer of motor fuel;

(C) any person engaged in the transportation and sale of natural gas or liquefied petroleum gas for use as a motor fuel;

(D) any person engaged in the production of alcohol or hydrogen for sale and use as a motor fuel; and

(E) any utility engaged in the generation and sale to the public of electricity.

SEC. 4305. REPLACEMENT AND ALTERNATIVE FUEL PROGRAM.—(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a pro-

gram to promote the development and use of domestically produced replacement and alternative fuels. Such program shall promote the replacement of conventional petroleum motor fuels with replacement and alternative fuels to the maximum extent practicable. Such program shall, to the extent practicable, seek to ensure the availability of those replacement and alternative fuels that will have the greatest impact in improving air quality in urban areas, along transportation corridors, and nationwide.

(b) **DEVELOPMENT PLAN.**—Under the program established under subsection (a), the Secretary, in consultation with the Administrator, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, and the heads of appropriate agencies, shall review appropriate information and—

(1) estimate the production capacity in the United States for replacement fuel and alternative fuel needed to implement the provisions of this subtitle;

(2) determine the technical and economic feasibility of producing in the United States sufficient replacement fuels and alternative fuels, by the calendar year 2010 to replace 30 per centum or more, on an energy equivalent basis, of the projected consumption of motor fuel in the United States for that year;

(3) assess the suitability and cost-effectiveness of raw materials, other than conventional petroleum, for the production in the United States of replacement and alternative fuels;

(4) assess the suitability and cost-effectiveness of the means and methods of developing and encouraging the production, distribution, and use of replacement and alternative fuels; and

(5) identify ways to encourage the development of reliable replacement fuel and alternative fuel industries in the United States, and the technical, economic, and institutional barriers to such development.

SEC. 4306. ALTERNATIVE FUEL DEMAND ESTIMATES.—(a) **ANNUAL ESTIMATES.**—Not later than October 1, 1994, and not later than October 1 of each year thereafter, the Secretary, in consultation with the Administrator and appropriate State and Federal officials, shall estimate—

(1) the number of each type of alternative fuel vehicles likely to be in use in the United States during the following calendar year;

(2) the probable geographic distribution of such vehicles; and

(3) the amount of each type of alternative fuel that is needed to fuel such number of vehicles.

(b) **PROVIDER CERTIFICATIONS.**—Not later than October 1, 1994, and not later than October 1 of each year thereafter, the Secretary shall require providers of domestic replacement and alternative fuels to certify to the Secretary the amount of each type of replacement and alternative fuel that such provider plans to produce.

SEC. 4307. VOLUNTARY SUPPLY COMMITMENTS.—The Secretary shall undertake to obtain commitments from providers of domestic replacement and alternative fuels to produce and offer for sale to the public sufficient amounts of domestic replacement and alternative fuels to meet the needs of vehicles requiring such fuels.

SEC. 4308. SECRETARIAL AUTHORITY.—(a) **NOTIFICATION OF CONGRESS.**—In the event that the Secretary determines under this subtitle that the amount of replacement and alternative fuels available in any area of the United States is insufficient to meet public demand and the Secretary is unable to obtain voluntary commitments under section 4307 to supply such demand, the Secretary shall provide written notice to Congress.

(b) **SUBMITTAL OF PLAN.**—Not later than thirty days after submitting notice under subsection (a), the Secretary shall submit a plan setting forth the actions the Secretary may take to require providers of motor fuels to make available to the public adequate domestic supplies of the replacement or alternative fuel of which there is a shortage. In developing any such plan, the Secretary shall consult with providers of motor fuels to consider alternative means of securing adequate supplies of such fuel and shall give providers an opportunity to comment on any specific proposed requirements to make such fuel available.

(c) **IMPLEMENTATION OF PLAN.**—The Secretary may implement a plan under subsection (b) sixty calendar days after it has been submitted to Congress in accordance with this section.

(d) **PERSONS SUBJECT TO REQUIREMENT.**—In exercising the authority under this section, the Secretary shall impose the requirement of providing the required amount of replacement or alternative fuel proportionately on all appropriate providers of motor fuels in a fair and equitable manner.

SEC. 4309. AUTHORIZATION.—There is authorized to be appropriated to the Secretary to carry out this subtitle not to exceed \$10,000,000 for each of the fiscal years 1992 through 1996.

Subtitle D—Mass Transit and Training

SEC. 4401. MASS TRANSIT PROGRAM.—(a) **COOPERATIVE AGREEMENTS AND JOINT VENTURES.**—(1) The Secretary, in consultation with the Administrator of the Urban Mass Transit Administration, may, consistent with this Act and the Alternative Motor Fuels Act of 1988 (Public Law 100-494), enter into cooperative agreements and joint ventures proposed by municipal, county, or regional transit authority in an urban area with a population over 100,000 (according to latest available census information) to demonstrate the feasibility, including safety of specific vehicle design, of using natural gas or other alternative fuels for mass transit.

(2) The cooperative agreements and joint ventures under paragraph (1) may include interested or affected private firms willing to provide assistance in cash, or in kind, for any such demonstration.

(b) **COST-SHARE.**—(1) The Secretary may not enter into any cooperative agreement or joint venture under subsection (a) with any municipal, county or regional transit authority unless such government entity agrees to provide at least 25 percent of the costs of such demonstration.

(2) The Secretary, at his discretion, may grant such priority under this section to any entity that demonstrates that the use of natural gas or other alternative fuels used for transportation would have a significant effect on the ability of an air quality region to comply with applicable regulations governing ambient air quality.

(c) **AUTHORIZATION.**—There is authorized to be appropriated not more than \$30,000,000 for each of fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 4402. TRAINING PROGRAM.—(a) **PROGRAM.**—The Secretary of Labor shall establish and carry out a training and certification program for technicians who are responsible for vehicle installation of equipment that converts gasoline or diesel-fueled vehicles to the capability to run on natural gas or other alternative fuels alone, or on natural gas or other alternative fuels and either diesel fuel or gasoline, and for the maintenance of such converted vehicles. Such training and certification programs shall provide these technicians with instruction on the correct installation procedures and techniques, adherence to specifications, vehicle operating procedures, emissions testing, and other appropriate mechanical concerns applicable to these vehicle conversions.

(b) **COOPERATIVE AGREEMENTS.**—The Secretary may enter into cooperative agreements with, and provide financial assistance to, under this section, appropriate parties to provide training programs that will ensure the proper operation and performance of conversion equipment.

(c) **CONSISTENCY.**—The program under this section shall be consistent with the Alternative Motor Fuels Act of 1988 (Public Law 100-494).

(d) **AUTHORIZATION.**—There is authorized to be appropriated not more than \$5,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

TITLE V—RENEWABLE ENERGY

Subtitle A—CORECT and COEECT

SEC. 5101. DUTIES OF CORECT AND COEECT.—Section 256 of Part B of Title II of the Energy Policy and Conservation Act (Public Law 94-163) is amended by striking subsection (d) and inserting the following in lieu thereof:

“(d)(1) **DUTIES.**—There shall be established two interagency working groups (hereafter in this subsection referred to as the Committee on Renewable Energy Commerce and Trade (CORECT) and the Committee on Energy Efficiency Commerce and Trade (COEECT)). These interagency working groups shall, in consultation with the representative industry groups and relevant agency heads, make recommendations to coordinate the actions and programs of the Federal Government to promote the export of domestic renewable energy and energy efficiency products and technologies, respectively. The Secretary of Energy shall chair each group. The heads of appropriate agencies may detail such personnel and may furnish such services to such working groups, with or without reimbursement, as may be necessary to carry out their functions and undertake other actions or activities, consistent with existing laws and regulation, as, in the judgement of the Secretary, may be necessary to achieve the purposes of this section.

“(2)(A) **ADDITIONAL DUTIES OF CORECT.**—CORECT, through its member agencies, shall promote the development and application

in lesser-developed countries of renewable energy resource products and technologies that—

“(i) promote the use of hybrid fossil-renewable energy systems;

“(ii) reduce dependence on unreliable sources of energy by encouraging the use of sustainable biomass, windpower, small-scale hydropower, solar, geothermal and other renewable energy resource technologies; and

“(iii) foster rural and urban energy development and energy self-sufficiency through the use of reliable and cost-effective renewable energy resource technologies.

“(B) In addition, CORECT shall:

“(i) explore mechanisms for assisting domestic manufacturers, particularly small business manufacturers, of renewable energy resource technologies, to export their products and technologies;

“(ii) provide staffing to support the authority and responsibilities described in this section;

“(iii) provide technical and financial support for the establishment and sponsorship by United States' firms of training programs, workshops, and other educational programs on renewable energy technologies for representatives of lesser-developed countries and their firms; and

“(iv) augment budgets for the trade and development programs of the member agencies of the Council in order to support pre-feasibility or feasibility studies for projects that utilize renewable energy resource technologies.

“(3)(A) ADDITIONAL DUTIES OF COEECT.—COEECT, through its member agencies, shall promote the development and application in lesser-developed countries of energy efficiency resource products and technologies that—

“(i) reduce dependence on unreliable sources of energy by encouraging the use of energy efficiency resource products and technologies; and

“(ii) foster rural and urban energy development and energy self-sufficiency through the use of reliable and economical energy efficiency resource products and technologies including services.

“(B) In addition, COEECT shall:

“(i) explore mechanisms for assisting domestic manufacturers, particularly small business manufacturers, of energy efficiency resource products and technologies, to export their products and services; and

“(ii) provide staffing to support the authority and responsibilities described in this section.

“(4) TRAINING AND ASSISTANCE.—In furthering the purposes of this section, CORECT and COEECT shall, through their member agencies—

“(A) provide aggressive in-country technical training for local users and international development personnel;

“(B) provide financial and technical assistance to nonprofit institutions that support the export and marketing efforts of domestic renewable energy and energy efficiency service com-

panies, and develop environmentally responsible renewable energy and energy efficiency projects in developing nations;

"(C) establish feasibility and loan guarantee programs to facilitate access to capital and credit;

"(D) provide assistance and training materials to loan officers of the World Bank, international lending institutions, commercial and energy attaches at embassies of the United States, and such other personnel as the Council deems appropriate, in order to provide information about renewable energy and energy efficiency products and technologies to foreign governments or other potential project sponsors;

"(E) support, through financial incentives, private sector efforts to commercialize and export renewable energy and energy efficiency resource technologies.

"(5) OUTREACH.—CORECT and COEECT, through their member agencies, may establish renewable energy and energy efficiency industry outreach offices in the Pacific Rim and in the Caribbean Basin for the purpose of providing information concerning renewable energy and energy efficiency products, technologies, and industries of the United States to territories, foreign governments, industries, and other entities."

SEC. 5102. INFORMATION AND TECHNICAL PROGRAM.—Section 256(c)(2)(D) of part B of title II of the Energy Policy and Conservation Act (Public Law 94-163) is amended by adding after clause (ii) the following new clause:

"and

"(iii) information on the specific renewable energy and energy efficiency technology needs of lesser-developed countries, the technical and economic competitiveness of various renewable energy and energy efficiency resource products, processes and technologies, and the status of ongoing technology assistance programs shall be provided. Information from this program shall be made available to industry, Federal and multi-lateral lending agencies, non-governmental organizations, host-country and donor-agency officials, and such others as the Secretary deems necessary."

SEC. 5103. COMPREHENSIVE ENERGY TECHNOLOGY EVALUATION.—Section 256 of part B of title II of the Energy Policy and Conservation Act (Public Law 94-163) is amended by striking subsections (g) and (h) and inserting in lieu thereof subsections (g) and (h) as follows:

"(g)(1) Not later than June 1, 1992, and biennially thereafter, the Secretary, in consultation with member agencies, shall prepare and submit to Congress a report evaluating the range of energy efficiency and renewable energy resource technologies available to meet the energy needs of lesser-developed countries. This report also shall provide information on the specific energy and energy conservation needs of lesser-developed countries, an inventory of United States products and technologies available to meet those needs, and an update on the status of ongoing bilateral and multi-lateral technology assistance and renewable energy and energy efficiency programs.

"(2) The report should also include an evaluation of current renewable energy and energy efficiency resource technology export

efforts, their success in meeting program objectives, and recommendations for future programs that:

"(A) develop and promote sustainable use of indigenous renewable energy and energy efficiency resources and technologies in lesser-developed countries;

"(B) given the credit and capital restrictions for meeting energy demands in the lesser-developed countries, focus on technologies that are both appropriate and cost-effective;

"(C) assist lesser-developed countries in meeting their existing energy needs rather than creating new needs, in order to ensure immediate income-generating and timely use of the power generated;

"(D) work with local individuals to assure that programs and projects meet specific national and local energy resource needs;

"(E) use indigenous materials and associated hardware, wherever possible, in order to reduce costs and ensure project duplication;

"(F) provide examples of cost-effective systems and applications for in-country non-governmental organizations and project technical personnel;

"(G) provide mechanisms for assisting United States manufacturers, particularly smaller manufacturers, of energy efficiency and renewable energy resource technologies, in exporting their goods and services;

"(H) expand technical and administrative training programs, as well as distribution of multilingual technical training manuals and related materials; and

"(I) examine the potential for using economic incentives, such as shared savings contracts, loan guarantees, and tax incentives, to promote technology transfer to lesser-developed countries.

"(h) AUTHORIZATION.—(1) There is authorized to be appropriated for purposes of carrying out the programs under sections (d) and (e) \$10,000,000 for fiscal year 1992, including \$2,000,000 to carry out the purposes of subparagraph (d)(2), and such sums as may be necessary for fiscal year 1993 and 1994 to carry out the purposes of this subtitle except for subparagraph (d)(4).

"(2) There is authorized to be appropriated to the Secretary for the purposes of subparagraph 256(d)(4), in addition to the amount specified in the previous sentence, \$2,750,000 for fiscal year 1992, and such sums as may be necessary for fiscal years 1993 and 1994."

SEC. 5104. CONFORMING AMENDMENT.—Section 203(a) of the Department of Energy Organization Act (Public Law 95-91; 42 U.S.C. 7133) is amended by adding a new paragraph (12) at the end thereof:

"(12) the export and promotion to lesser-developed countries of domestic energy resource technologies and products, including renewable energy, energy efficiency, and clean coal technologies, and the development of policies and programs designed to enhance the knowledge of foreign governments and companies, and relevant international lending institutions regarding domestic energy resource technologies and products."

Subtitle B—Renewable Energy Initiatives

SEC. 5201. RENEWABLE ENERGY DEVELOPMENT, TECHNOLOGY EXPORT TRAINING, AND COMMERCIALIZATION.—(a) **JOINT VENTURES FOR RENEWABLE ENERGY DEVELOPMENT FOR OIL DISPLACEMENT AND TECHNOLOGY EXPORT TRAINING.**—Section 6 of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Public Law 101-218) is amended by adding new subsections (f), (g), and (h) as follows:

“(f) **ADDITIONAL JOINT VENTURES FOR RENEWABLE ENERGY DEVELOPMENT FOR OIL DISPLACEMENT.**—

“(1) **OIL DISPLACEMENT BY BIOFUELS ENERGY SYSTEMS.**—

“(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of biofuels energy systems technology in accordance with the provisions of this paragraph.

“(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for the development of biofuels energy systems for commercial application in uses that have substantial prospects for displacing the consumption of oil.

“(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

“(2) **OIL DISPLACEMENT BY HIGH TEMPERATURE GEOTHERMAL ENERGY.**—

“(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of high-temperature geothermal energy conversion technology in accordance with the provisions of this paragraph.

“(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for the production of high-temperature geothermal energy for commercial application in uses that have substantial prospects for displacing the consumption of oil.

“(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

“(3) **OIL DISPLACEMENT BY LOW-TEMPERATURE GEOTHERMAL ENERGY.**—

“(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of low-temperature geothermal energy conversion technology in accordance with the provisions of this paragraph.

“(B) The purposes of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for the production of low-temperature geothermal energy for commercial application in uses

that have substantial prospects for displacing the consumption of oil.—

“(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

“(4) OIL DISPLACEMENT BY SOLAR WATER HEATING.—

“(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of solar water heating technology in accordance with the provisions of this paragraph.

“(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for solar water heating for commercial application in institutional water heating and process heat uses that have substantial prospects for displacing the consumption of oil.

“(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

“(5) DIESEL FUEL OIL DISPLACEMENT BY PHOTOVOLTAIC AND WIND ENERGY SYSTEMS.—

“(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of photovoltaic and wind energy systems in accordance with the provisions of this paragraph.

“(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for photovoltaic and wind energy systems for commercial application in electric power generation uses that have substantial prospects for displacing the consumption of diesel fuel oil.

“(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

“(6) DIESEL FUEL OIL DISPLACEMENT BY DIRECT COMBUSTION OR GASIFICATION OF BIOMASS.—

“(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of technologies for the direct combustion or gasification of biomass in accordance with the provisions of this paragraph.

“(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for direct combustion or gasification of biomass, including waste wood, for industrial process heat and electric power generation for commercial application in uses that have substantial prospects for displacing the consumption of diesel fuel oil.

“(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years

1992, 1993, and 1994 to carry out the purposes of this paragraph.

"(7) OIL DISPLACEMENT BY FUEL CELLS TECHNOLOGY.—

"(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the demonstration of fuel cells technology in accordance with the provisions of this paragraph.

"(B) The purpose of joint ventures supported under this paragraph shall be to design, test, and demonstrate critical enabling technologies for the production of electric energy from fuel cells in order to accelerate commercial application of fuel cells.

"(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

"(g) RENEWABLE ENERGY AND ENERGY EFFICIENCY TECHNOLOGY EXPORT TRAINING.—

"(1) The Secretary shall solicit proposals for and provide financial assistance to at least two joint ventures for the training of individuals from lesser-developed countries at a location or locations in the United States, at least one of which shall be in the operation and maintenance of renewable energy equipment and at least one of which shall be in the operation and maintenance of energy efficiency equipment, in accordance with the provisions of this subsection.

"(2) The purpose of joint ventures supported under this subsection shall be to train individuals, including engineers and other professionals, in the operation and maintenance of renewable energy and energy efficiency equipment manufactured in the United States, including equipment for water pumping and the production of electric power in remote areas, in order to enhance the prospects that such equipment can be used to displace the use of diesel fuel oil in developing countries.

"(3) There is authorized to be appropriated to the Secretary not to exceed \$6,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this subsection.

"(h) UTILITY-SCALE PHOTOVOLTAIC JOINT VENTURES.—

"(1) The Secretary shall solicit proposals and provide financial assistance for at least one joint venture for a utility-scale photovoltaic project of at least ten megawatts.

"(2) In general, the goals of joint ventures under this subsection shall include—

"(A) the integration of photovoltaics in approaches to the transmission and delivery systems;

"(B) the development of cost-saving adjuncts to utility delivery such as sub-station upgrades, peak power, and large-scale voltage line augmentation; and

"(C) the incorporation of new photovoltaic innovations into standard utility rate-making practices.

"(3) Joint ventures supported under this subsection may include participants that are considered to be end-users of the technology such as rural electric cooperatives, public utilities, investor-owned utilities, and independent power producers.

"(4) In selecting joint ventures for support under this subsection, the Secretary shall consider giving preference to proposals for projects that would be located in States where State law would allow inclusion of the project in the rate base or would otherwise allow for favorable regulatory treatment or return on investment.

"(5) There is authorized to be appropriated to the Secretary not to exceed \$9,000,000 for each of fiscal years 1992, 1993, and 1994 to carry out the purposes of this subsection."

(b) CONFORMING AMENDMENTS.—Section 6 of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Public Law 101-218) is amended as follows:

(1) By replacing the phrase "subsection (c)" with the phrase "subsections (c), (f), (g) and (h)" in the first sentence of paragraph (b)(1).

(2) By substituting a new paragraph (4) of subsection (b) to read as follows:

"(4) DRAFT SOLICITATIONS AND PUBLIC COMMENT.—The Secretary shall issue a draft solicitation for joint ventures under subsection (c) by September 30, 1990 and a draft solicitation for joint ventures under subsections (f), (g), and (h) by September 30, 1992. After any such draft solicitation has been issued, the Secretary shall provide for a period of public comment before the issuance of a final solicitation."

(3) By striking the phrase "subsection (c)" everywhere it appears in subsection (d) and replacing it with "subsections (c) or (f), (g), and (h)".

(c) RENEWABLE ENERGY COMMERCIALIZATION.—The Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Public Law 101-218) is amended by adding at the end the following new section:

"SEC. 11. COMMERCIALIZATION.—"(a) DEFINITIONS.—For the purposes of this section the term—

"(1) 'qualified borrower' means an enterprise, that engages in the production and sale of electricity, thermal energy or other forms of energy using a renewable energy technology, or a manufacturer of renewable energy equipment who wishes to finance improvements in, or expansion of, facilities for the manufacture of renewable energy technologies;

"(2) 'renewable energy technology', with respect to a participant in any provision under this section, means any technology that produces, or uses as its principal energy source, biomass, geothermal, photovoltaic, wind, or solar thermal (including solar water heating, solar industrial process preheat, and solar industrial process heat); and

"(3) 'Federal share' means that portion of the interest on a loan financed by a private lender that is paid by the Federal Government, subject to subsection (b).

"(b) BUY DOWN AGREEMENTS.—

"(1) IN GENERAL.—The Secretary shall enter into agreements with private lenders to pay the Federal share of the interest on loans made to qualified borrowers for the purpose of financing the manufacture, construction or acquisition of equipment that principally utilizes a renewable energy technology. Buy down

agreements entered into by the Secretary, may be implemented either directly through private lenders for Federal facilities or indirectly through an appropriate State energy office.

"(2) **RESTRICTION.**—Interest rate buy down agreements under this section shall not apply to projects where electricity is sold to electric utilities under section 210 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).

"(3) **FEDERAL SHARE.**—The Federal share of interest on a loan shall be determined by the Secretary on the basis of—

"(A) the need of the borrower for the assistance;

"(B) the degree to which financing of the project will assist in the regional diversification and commercialization of renewable energy resources in the United States; and

"(C) the achievement of the purposes and goals of this section.

"(4) **LOAN TERMS.**—The Secretary may enter into an agreement under paragraph (1) to pay the Federal share of interest on not less than ten separate loans that—

"(A)(i) have a principal amount of at least \$250,000 and less than \$1,000,000 and have a maturity of not less than fifteen years; or

"(ii) have a principal amount of at least \$1,000,000, and have a maturity of not less than twenty years;

"(B) carry an interest rate no greater than five percent above the prime rate or at an interest rate that the Secretary determines to be reasonable; and

"(C) contain such other terms and conditions that the Secretary deems appropriate.

"(c) **REPORT.**—Not later than two years after the date of enactment of this section and annually thereafter, the Secretary shall report to Congress on the projects funded under this section and the progress being made toward accomplishing the goals and purposes of this section.

"(d) **AUTHORIZATION.**—There is authorized to be appropriated to the Secretary for fiscal years 1992, 1993, and 1994 such sums as may be necessary to carry out the purposes of this section."

SEC. 5202. REPORT ON WASTE MINIMIZATION TECHNOLOGIES IN INDUSTRY. (a) **REPORT.**—Within one year after the date of enactment of this Act, the Secretary shall provide to the Committee on Energy and Natural Resources of the United States Senate and to the United States House of Representatives a report evaluating opportunities to minimize waste outputs from production processes in industries in the United States.

(b) **CONTENTS.**—The report required by this section shall include—

(1) an assessment of the technologies available to increase productivity and simultaneously reduce the consumption of energy and material resources and the production of wastes;

(2) an assessment of the current use of such technologies by industry in the United States;

(3) the status of any such technologies currently being developed, together with projected timeframes for their commercial availability;

- (4) the energy savings resulting from the use of such technologies;
- (5) the environmental benefits of such technologies;
- (6) the costs of such technologies;
- (7) an evaluation of any existing Federal or state regulatory disincentives for the employment of such technologies; and
- (8) an evaluation of any other barriers to the use of such technologies.

(c) **CONSULTATION.**—In preparing the report required by this section, the Secretary shall consult with the Administrator of the Environmental Protection Agency, any other Federal, State, or local official the Secretary deems necessary, representatives of appropriate industries, members of organizations formed to further the goals of environmental protection or energy efficiency, and other appropriate interested members of the public, as determined by the Secretary.

SEC. 5203. AMENDMENTS TO THE ENERGY POLICY AND CONSERVATION ACT.—Section 362(d) of the Energy Policy and Conservation Act (Public Law 94-163; 42 U.S.C. 6322(d)) is amended by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively, and adding a new paragraph (12) as follows:

“(12) support for pre-feasibility and feasibility studies for projects that utilize renewable energy and energy efficiency resource technologies in order to facilitate access to capital and credit for such projects;”.

SEC. 5204. SPARK M. MATSUNAGA RENEWABLE ENERGY AND OCEAN TECHNOLOGY CENTER.—(a) **FINDINGS.**—The Congress finds that—

(1) the late Spark M. Matsunaga, United States Senator from Hawaii, was a longstanding champion of research and development of renewable energy, particularly wind and ocean energy, photovoltaics, and hydrogen fuels;

(2) it was Senator Matsunaga's vision that renewable energy could provide a sustained source of non-polluting energy and that such forms of alternative energy might ultimately be employed in the production of liquid hydrogen as a transportation fuel and energy storage medium available as an energy export;

(3) Senator Matsunaga also believed that research on other aspects of renewable energy and ocean resources, such as advanced materials, could be crucial to full development of energy storage and conversion systems; and

(4) Keahole Point, Hawaii is particularly well-suited as a site to conduct renewable energy and associated marine research.

(b) **PURPOSE.**—It is the purpose of this section to establish the facilities and equipment located at Keahole Point, Hawaii as a cooperative research and development facility, to be known as the Spark M. Matsunaga Renewable Energy and Ocean Technology Center.

(c) **ESTABLISHMENT.**—The facilities and equipment located at Keahole Point, Hawaii are established as the Spark M. Matsunaga Renewable Energy and Ocean Technology Center (referred to as the “Center”).

(d) **ADMINISTRATION.**—(1) Not later than 180 days after the date of enactment of this section, the Secretary shall seek to enter into

a cooperative agreement with a qualified research institution to administer the Center.

(2) For the purpose of paragraph (1), a qualified research institution is a research institution located in the State of Hawaii that has demonstrated competence and will be the lead organization in the State in renewable energy and ocean technologies.

(e) **ACTIVITIES.**—The Center may carry out research, development, and technology transfer activities on—

- (1) solar and renewable energy;
- (2) energy storage, including the production of hydrogen from renewable energy;
- (3) materials applications related to energy and marine environments;
- (4) other environmental and ocean resource concepts, including sea ranching and global climate change; and
- (5) such other matters as the Secretary may direct.

(f) **MATCHING FUNDS.**—To be eligible for Federal funds under this section, the Center must provide funding in cash or in kind from non-Federal sources for each amount provided by the Secretary.

(g) **AUTHORIZATION.**—There is authorized to be appropriated to the Secretary \$3,000,000 for fiscal year 1992, \$4,000,000 for fiscal year 1993, \$5,000,000 for fiscal year 1994, and such sums as are necessary thereafter for the purposes of this section.

SEC. 5205. RENEWABLE ENERGY TECHNICAL ACHIEVEMENT AWARD.—(a) **PROGRAM.**—Within one year after the date of enactment of this Act, the Secretary, in consultation with the National Academy of Sciences, shall establish a program to reward outstanding achievement in each of the following technologies: solar thermal, photovoltaics, wind, biomass, geothermal, and such other renewable energy technologies as the Secretary deems appropriate.

(b) **TECHNICAL ACHIEVEMENT MILESTONES.**—The Secretary, in consultation with the National Academy of Sciences, shall establish a milestone for technical achievement for the year 2010 for each technology listed in subsection (a). The Secretary shall also establish criteria necessary to determine whether the technical achievement milestones have been met. Such criteria shall include:

- (1) the cost of power delivered under each technology;
- (2) the efficiency of each technology's energy conversion;
- (3) the potential for large-scale commercial production; and
- (4) such other criteria as the Secretary deems appropriate.

(c) **AWARD.**—The Secretary, in consultation with the National Academy of Sciences, shall award up to \$5,000,000 in each renewable energy technology category to the first person who is a United States citizen and has been determined by the Secretary to have met the technical achievement milestones described under subsection (b).

(d) **AUTHORIZATION.**—There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this section.

Subtitle C—Hydropower

SEC. 5301. STREAMLINING OF FEDERAL POWER ACT REGULATION.—The Federal Power Act, as amended, (16 U.S.C. 791a et seq.) is further amended by:

(a) striking in section 4(e) the following:

“, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation”

and inserting the following in lieu thereof:

“and in the case of a Government dam shall be subject to and contain such conditions as the Secretary of the department under whose supervision such Government dam falls shall deem necessary to ensure that the license will not interfere or be inconsistent with the authorized purposes for which such Government dam was created and shall not detract from all lawful obligations of the Secretary of jurisdiction, including operation and maintenance, relating to such Government dam in accordance with contractual or other arrangements and in a manner which ensures the protection, preservation and safety of the public welfare: *Provided further*, That licenses issued for projects located in whole or in part on an Indian reservation shall be subject to and contain such conditions as the Secretary of the Interior shall deem necessary for the adequate protection and utilization of such Indian reservation”;

(b) striking “(2)” in section 10(j)(1) and inserting “(3)” in lieu thereof;

(c) striking everything after paragraph (1) in section 10(j) and inserting the following new paragraphs in lieu thereof:

“(2) With respect to a project located in part or in whole within a reservation, other than an Indian reservation, and not located at a Government dam, a license issued under this part shall include conditions for the protection and utilization of such reservation. Subject to paragraph (3), such conditions shall be based on recommendations received from the Secretary under whose supervision such reservation falls.

“(3) Whenever the Commission believes that any recommendation referred to in paragraphs (1) or (2) may be inconsistent with the purposes and requirements of this part or other applicable law, the Commission and the relevant agencies or Secretaries referred to in paragraphs (1) and (2) shall attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise and statutory responsibilities of such agencies or Secretaries. If, after such attempt, the Commission does not adopt in whole or in part a recommendation of any such agency or Secretary, the Commission shall publish each of the following findings (together with a statement of the basis for each of the findings):

“(A) A finding that adoption of such recommendation is inconsistent with the purposes and requirements of this part or with other applicable provisions of law.

“(B) A finding that the conditions selected by the Commission comply with the requirements of paragraph (1) or (2) as appropriate.”;

(d) striking subsection (i) in section 10 and relettering the subsections accordingly;

(e) in section 4 inserting “, and for the purposes of subsections (h) and (i), the Commission shall”, after “empowered” and inserting the following after subsection (g):

“(h) Establish procedures that, to the extent practicable, provide for the earliest identification and performance of all studies and analyses required to be performed in conjunction with an application for a license under this part.

“(i)(1) Coordinate a single, consolidated review, including review under the National Environmental Policy Act of 1969, of a project which is the subject of an application for a license under this part, by all Federal agencies, State agencies and affected Indian tribes interested in the project that is the subject of the application. The Commission shall give reasonable notice of the application and the consolidated review to all Federal agencies, State agencies and affected Indian tribes that may be interested in the project that is the subject of the application. The Commission shall be the lead agency for purposes of compliance with the National Environmental Policy Act of 1969. A review under the National Environmental Policy Act of 1969 completed by the Commission as part of this consolidated review shall be the only documentation needed by an agency to satisfy the requirements of the National Environmental Policy Act of 1969 for the project subject to the review. The Commission’s decision concerning issuance of a license and the terms, conditions and prescriptions of the license shall take into account the results of the consolidated review. An agency’s decision concerning its recommendations, terms, conditions and prescriptions for the license and any approvals within its authority related to the project shall take into account the results of the consolidated review. The Commission may establish reasonable time limits for submission of recommendations, terms, conditions, prescriptions and reports by a Federal agency, State agency or Indian tribe as part of the consolidated review. If an agency does not meet the Commission’s time limitations, the Commission may continue to process and to take any appropriate action on the application.

“(2) Where environmental documents are prepared in connection with an application for a license under this part, the Commission shall permit, at the election of the applicant, a contractor, consultant or other person funded by the applicant to prepare such environmental document. The contractor shall be chosen by the Commission in its sole discretion. The Commission shall establish procedures to assure that the contractor, consultant or other person has no financial or other potential conflict of interest in the outcome of the proceeding. Nothing herein shall affect the Commission’s responsibility to comply with the National Environmental Policy Act of 1969.”.

SEC. 5302. STATE LICENSING JURISDICTION OVER SMALL PROJECTS.—The Federal Power Act, as amended, (16 U.S.C. 791a et seq.) is further amended by adding the following at the end of section 23:

“(c) In the case of any project works: (1) that are not part of a project licensed under this Act prior to the date of enactment of this subsection; (2) for which a license application has not been ac-

cepted for filing by the Commission prior to the date of enactment of this subsection (unless such application is withdrawn at the election of the applicant); (3) having a power production capacity of 5000 kilowatts or less; (4) located entirely within the boundaries of a single State; and (5) not located in whole or in part on any Indian reservation, unit of the National Park System, component of the Wild and Scenic Rivers System or segment of a river designated for study for potential addition to such system, the State in which such project works are located shall have the exclusive authority to authorize such project works under State law, in lieu of licensing by the Commission under the otherwise applicable provisions of this Part, effective upon the date on which the Governor of the State notifies the Secretary of Energy that the State has assessed its river resources in a comprehensive way and has in place a process for regulating such projects which gives appropriate consideration to the improvement or development of the State's waterways for the use or benefit of intrastate, interstate, or foreign commerce, for the improvement and use of waterpower development, for the adequate protection, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds), and for other beneficial public uses, including irrigation, flood control, water supply, recreational and other purposes, and Indian rights, if applicable.

"(d) In the case of a project that would be subject to authorization by a State under subsection (c) but for the fact that the project has been licensed by the Commission prior to the enactment of subsection (c), the licensee of such project may in its discretion elect to make the project subject to the authorizing authority of the State.

"(e) With respect to projects located in whole or in part on Federal lands, State authorizations for project works pursuant to subsection (c) of this section shall be subject to the approval of the Secretary having jurisdiction with respect to such lands and subject to such terms and conditions as the Secretary may prescribe.

"(f) Nothing in subsection (c) shall preempt the application of Federal environmental, natural, or cultural resources protection laws according to their terms."

SEC. 5303. IMPROVEMENT AT EXISTING FEDERAL FACILITIES.—(a) STUDIES OF OPPORTUNITIES FOR INCREASED HYDROELECTRIC GENERATION.—The Secretary, in consultation with the Secretary of the Interior and the Secretary of the Army, shall perform studies of cost effective opportunities to increase hydropower production at existing Federally-owned or operated water regulation, storage, and conveyance facilities. Such studies shall be completed within two years after the date of enactment of this Act and transmitted to the Committee on Energy and Natural Resources of the United States Senate and to the United States House of Representatives. An individual study shall be prepared for each of the Nation's principal river basins. Each such study shall identify and describe with specificity the following matters:

- (1) opportunities to improve the efficiency of hydroelectric generation at such facilities through, but not limited to, mechanical, structural, or operational changes;

- (2) opportunities to improve the efficiency of the use of water supplied or regulated by Federal projects where such improve-

ment could, in the absence of legal or administrative constraints, make additional water supplies available for hydroelectric generation or reduce project energy use;

(3) opportunities to create additional generating capacity at existing facilities through, but not limited to, the construction of additional generating units, the uprating of generators and turbines, and the construction of pumped storage facilities; and

(4) preliminary assessment of the costs of such measures.

(b) **EXCEPTION FOR PREVIOUS STUDIES.**—In those cases where studies of the type required by this section have been prepared by any agency of the United States and published within the ten years prior to the date of enactment of this Act, the Secretary may choose not to perform new studies but incorporate the information developed by such studies into the study reports required by this section.

(c) **AUTHORIZATION.**—There is authorized to be appropriated in each of the fiscal years 1992, 1993, and 1994 such sums as may be necessary to carry out the purposes of this section.

SEC. 5304. WATER CONSERVATION AND ENERGY PRODUCTION.—(a) **STUDIES.**—The Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388), and Acts supplementary thereto and amendatory thereof, is authorized and directed to conduct feasibility investigations of opportunities to increase the amount of hydroelectric energy available for marketing by the Secretary from Federal hydroelectric power generation facilities resulting from a reduction in the consumptive use of such power for Federal reclamation project purposes or as a result of an increase in the amount of water available for such generation because of water conservation efforts on Federal reclamation projects or a combination thereof. The Secretary of the Interior is further authorized and directed to conduct feasibility investigations of opportunities to mitigate damages to or enhance fish and wildlife as a result of increasing the amount of water available for such purposes because of water conservation efforts on Federal reclamation projects. Such feasibility investigations shall include, but not be limited to—

(1) an analysis of the technical, environmental, and economic feasibility of reducing the amount of water diverted upstream of such Federal hydroelectric power generation facilities by Federal reclamation projects;

(2) an estimate of the reduction, if any, of project power consumed as a result of the decreased amount of diversion;

(3) an estimate of the increase in the amount of electrical energy and related revenues which would result from the marketing of such power by the Secretary;

(4) an estimate of the fish and wildlife benefits which would result from the decreased or modified diversions;

(5) a finding by the Secretary of the Interior that the activities proposed in the feasibility study can be carried out in accordance with applicable Federal and State law, interstate compacts and the contractual obligations of the Secretary; and

(6) a finding by the affected Federal Power Marketing Administrator that the hydroelectric component of the proposed water conservation feature is cost-effective and that the affect-

ed Administrator is able to market the hydro-electric power expected to be generated.

(b) **CONSULTATION.**—In preparing feasibility studies pursuant to this section, the Secretary of the Interior shall consult with, and seek the recommendations of, affected State, local and Indian tribal interests, and shall provide for appropriate public comment.

(c) **CONSTRUCTION.**—Upon a finding of feasibility by the Secretary of the Interior, and agreement with the affected Power Marketing Administrator, and the expiration of ninety days during which the feasibility investigation related thereto has lain before the Congress, the Secretary of the Interior, acting pursuant to the Federal reclamation laws, is authorized to construct, operate and maintain the water conservation features described by and justified in the feasibility investigations prepared pursuant to subsection (a) of this section.

(d) **FINANCING.**—Revenues received by the respective Federal Power Marketing Administrators from the marketing of hydroelectric energy made available as a result of the water conservation activities undertaken pursuant to this section shall be disposed of by the respective Federal Power Marketing Administrators pursuant to applicable Federal power marketing law.

(e) **AUTHORIZATION.**—There is hereby authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out this section.

SEC. 5305. PROJECTS ON FRESH WATERS IN THE STATE OF HAWAII.—(a) **GENERAL LICENSING AUTHORITY.**—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended by striking "several States, or upon" and inserting "several States (except fresh waters in the State of Hawaii), or upon".

(b) **MANDATORY LICENSING AUTHORITY.**—Section 23(b) of the Federal Power Act (16 U.S.C. 817(b)) is amended by striking "United States, or upon" and inserting "United States (except fresh waters in the State of Hawaii), or upon".

SEC. 5306. CERTAIN PROJECTS IN THE STATE OF ALASKA.—The following projects located entirely within the State of Alaska are removed from jurisdiction of the Federal Energy Regulatory Commission and all applicable laws and regulations relating to such jurisdiction:

(1) a project located at Sitka, Alaska, with application numbered UL89-08-000; and

(2) a project located at Juneau, Alaska, with preliminary permit numbered 10681-000.

SEC. 5307. EXTENSION OF TIME LIMITATIONS FOR CERTAIN PROJECTS IN ARKANSAS.—(a) **AUTHORIZATION OF EXTENSIONS.** Notwithstanding the time limitations of section 13 of the Federal Power Act, (16 U.S.C. 806) the Federal Energy Regulatory Commission upon the request of the licensee for FERC projects numbered 3033 and 3034 (and after reasonable notice) is authorized in accordance with the good faith, due diligence, and public interest requirements of section 13 and the Commission's procedures under such section, to extend—

(1) until August 10, 1994 the time required for the licensee to acquire the required real property and commence the construc-

tion of Project No. 3033, and until August 10, 1999 the time required for completion of construction of such project; and

(2) until August 10, 1996 the time required for the licensee to acquire the required real property and commence the construction of Project No. 3034, and until August 10, 2001 the time required for completion of construction of such project.

(b) **TERMINATION OF AUTHORIZATION FOR EXTENSIONS.**—The authorization for issuing extensions shall terminate three years after the date of enactment of this Act. The Commission to facilitate requests under this section may consolidate such requests.

TITLE VI—ENERGY EFFICIENCY

Subtitle A--Industrial, Commercial and Residential

SEC. 6101. BUILDING ENERGY EFFICIENCY CODES.—(a) **ESTABLISHMENT OF CODES.**—Title III of the Energy Conservation and Production Act (Pub. L. No. 94-385), as amended, is amended by—

(1) amending section 303 by—

(A) striking paragraph (9),

(B) renumbering the subsequent paragraphs, and

(C) adding at the end the following new paragraphs—

“(13) the term ‘Federal building energy code’ means an energy consumption goal to be met without specification of the methods, materials, or equipment to be employed in achieving that goal, but including statements of the requirements, criteria, and evaluation methods to be used, and any necessary commentary.

“(14) The term ‘industry voluntary building energy code’ means a building energy code developed and updated through an industry process, such as that used by the Council of American Building Officials; the American Society of Heating, Refrigerating, and Air-conditioning Engineers; or other appropriate organizations.”; and

(2) striking sections 304, 306, 308, 309, 310, and 311 and their captions and inserting the following in lieu thereof—

“FEDERAL BUILDING ENERGY CODE

“SEC. 304. (a) Within two years of enactment of the National Energy Security Act of 1991, the Secretary, after consulting with appropriate Federal agencies; the Council of American Building Officials; the American Society of Heating, Refrigerating, and Air-conditioning Engineers; the National Association of Home Builders; the Illuminating Engineering Society; the American Institute of Architects; and the National Conference of States on Building Codes and Standards, shall issue by rule a Federal building energy code that assures the inclusion in Federal buildings of all energy efficiency measures that are technologically feasible and economically justified. This code shall become effective no earlier than six months and no later than two years after issued.

“(b) The Federal building energy code shall—

“(1) contain energy saving and renewable energy specifications that meet or exceed the energy saving and renewable

energy specifications of the industry voluntary building energy code, and

"(2) include a method of compliance that uses the same format as that used by the industry voluntary building energy code.

"(c) The Secretary shall identify and describe the basis for any substantive difference between the Federal building energy code and the industry voluntary building energy code.

"(d) Interim energy performance standards for new Federal residential and commercial buildings issued by the Secretary under this title as it existed before enactment of the National Energy Security Act of 1991 shall remain in effect until the head of a Federal agency required to adopt procedures under section 305(a) adopts those procedures.

"FEDERAL COMPLIANCE

"SEC. 305. (a) The head of each Federal agency shall adopt procedures necessary to assure that new Federal residential or commercial buildings meet or exceed the Federal building energy code.

"(b) The head of a Federal agency may expend Federal funds for the construction of a new Federal building only if the building meets or exceeds the Federal building energy code.

"(c) The head of each Federal agency that guarantees a mortgage for constructing a new building shall adopt the procedures necessary to assure that the building meets or exceeds the Federal building energy code.

"SUPPORT FOR INDUSTRY VOLUNTARY BUILDING ENERGY CODE

"SEC. 306. (a) Within one year of the enactment of the National Energy Security Act of 1991, the Secretary, after consulting with appropriate Federal agencies; the Council of American Building Officials; the American Society of Heating, Refrigerating, and Air-conditioning Engineers; the National Conference of States on Building Codes and Standards; and any other appropriate building codes and standards organization, shall support the upgrading of an industry voluntary building energy code for new residential and commercial buildings. The support shall include—

"(1) a compilation of data and other information regarding building energy efficiency codes in the possession of the Federal government, State and local governments, and industry organizations;

"(2) assistance in improving the technical basis for the energy code;

"(3) assistance in determining the cost-effectiveness and the technical feasibility of the energy efficiency measures included in the code; and

"(4) development of interim energy performance standards for new non-Federal residential buildings.

"(b) The Secretary, in consultation with the appropriate Federal agencies, shall periodically review the technical and economic basis of the industry voluntary building energy code. Based upon ongoing research activities and a review of appropriate industry energy standards, the Secretary shall—

"(1) recommend amendments to the industry voluntary building energy code,

"(2) seek adoption of all technically feasible and economically justified energy efficiency measures, and

"(3) participate otherwise in any industry process for review and modification of the industry voluntary building energy code.

"ADOPTION INCENTIVES

"SEC. 307. (a) STATE REPORT.—Within two years of the enactment of the National Energy Security Act of 1991, each State shall submit a report to the Secretary on the type and status of, and compliance and enforcement procedures for building energy codes used within the State, including a list of the units of general purpose local government within the State that identifies which, if any, have adopted building energy codes.

"(b) AVAILABILITY OF INCENTIVE FUNDING.—If the Secretary certifies that a state or any units of general purpose local government which have jurisdiction regarding energy building codes, has adopted building energy codes at least as stringent as those of the industry voluntary energy building codes, then the Secretary shall provide incentive funding to that State or such units of general purpose local government to fund activities to further promote the adoption and implementation of the industry voluntary energy building codes. Such incentive funds shall be allocated from funds made available under subsection (c), on the basis of the average number of residential housing starts within such State or unit of general purpose local government during the previous three years. The Secretary may use up to five percent of the funds made available under subsection (c) for administration of activities conducted pursuant to this section.

"(c) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to provide incentive funding to the States pursuant to this section.

"TECHNICAL ASSISTANCE

"SEC. 308. The Secretary may provide technical assistance to States, units of general purpose local government, and other appropriate organizations to promote the adoption and implementation of the voluntary energy building codes or to otherwise promote the design and construction of energy efficient buildings.

"REPORTS

"SEC. 309. The Secretary, in consultation with the appropriate Federal agencies, shall report annually to Congress on activities conducted pursuant to this title including:

"(1) the recommendations made regarding the prevailing industry voluntary building energy code under section 304(c);

"(2) a State-by-State summary of progress made in the adoption and implementation of the voluntary energy building codes or more stringent codes; and

"(3) recommendations to Congress on opportunities to further promote energy efficiency and other purposes of this part."

(b) **CONFORMING AMENDMENT.**—The table of contents of the Energy Conservation and Production Act (Public Law 94-385) is amended by striking the items relating to sections 304, 306, 308, and 309, and inserting in lieu thereof the following—

"Sec. 304. Federal building energy code.

"Sec. 305. Federal compliance.

"Sec. 306. Support for industry voluntary building energy code.

"Sec. 307. Adoption incentives.

"Sec. 308. Technical Assistance.

"Sec. 309. Reports."

SEC. 6102. RESIDENTIAL ENERGY EFFICIENCY RATINGS AND MORTGAGES.—(a) **RATINGS.**—Title II of the National Energy Conservation Policy Act (NECPA) (Public Law 96-619) is amended by adding a new part 6 as follows:

"PART 6—RESIDENTIAL ENERGY EFFICIENCY RATING GUIDELINES

"SEC. 271. VOLUNTARY RATING GUIDELINES.

"(a) Within eighteen months of the date of enactment of the National Energy Security Act of 1991, the Secretary, in consultation with the Secretary of Housing and Urban Development and other appropriate institutions, shall, by rule, promulgate voluntary guidelines that may be used by State and local governments, utilities, builders and others, that would enable the assignment of an energy efficiency rating to residential buildings.

"(b) The voluntary guidelines under subsection (a) shall:

"(1) provide for a uniform rating scale of the efficiency with which any residential building uses energy on an annual basis;

"(2) provide that such rating shall take into account local climate conditions and construction practices, and does not discriminate among fuel types, except that solar energy collected on-site shall be credited toward the energy efficiency rating of such building;

"(3) provide that all residential buildings can receive a rating at the time of sale;

"(4) provide that the rating is prominently communicated to potential buyers and renters; and

"(5) provide that the rating system is consistent with, and supportive of, the uniform plan for energy efficient mortgages developed pursuant to Section 946 of the Cranston-Gonzales National Affordable Housing Act (Pub. L. No. 101-625).

"SEC. 272. TECHNICAL ASSISTANCE.

"Within eighteen months after the date of the enactment of the National Energy Security Act of 1991, the Secretary shall establish a program to provide technical assistance to State and local organizations to encourage the adoption of residential energy efficiency rating systems based on the voluntary guidelines promulgated under this part.

"SEC. 273. AUTHORIZATION.

"There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this part."

(b) **CONFORMING AMENDMENT.**—The National Energy Conservation Policy Act (Public Law 95-619) is further amended by adding in the table of contents at the end of title II, the following items:

"PART 6—RESIDENTIAL ENERGY EFFICIENCY RATINGS

"Sec. 271. Rating guidelines.

"Sec. 272. Technical assistance.

"Sec. 273. Authorization."

(c) **ENERGY EFFICIENCY MORTGAGES.**—The Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625) is amended as follows:

(1) At the end of section 104 add the following new definition:

"(24) The term 'energy efficient mortgage' means a mortgage which provides financial incentives for the purchase of energy efficient homes, or which provides financial incentives to make energy efficiency improvements in existing homes by incorporating the cost of such improvements in the mortgage."

(2) In section 946 make the following amendments:

(A) In subsection (a) strike the words "mortgage financing incentives for energy efficiency" and insert in lieu thereof "energy efficient mortgages";

(B) at the end of subsection (a) add the following new sentence:

"The plan shall be consistent with and mutually supportive of the Federal building energy code and the residential energy efficiency rating voluntary guidelines to be developed by the Secretary of Energy pursuant to the National Energy Security Act of 1991."

(C) in subsection (b) after the word "include" add the words "but not be limited to";

(D) at the end of subsection (b) add the following new sentence:

"The Task Force shall determine whether a notification of the availability of energy efficient mortgages to potential home purchasers would promote energy efficiency in residential buildings, and if so, then the Task Force shall recommend appropriate notification guidelines, and member agencies are authorized to implement such guidelines."

SEC. 6103. MANUFACTURED HOUSING ENERGY EFFICIENCY.—(a) **AMENDMENTS TO CRANSTON-GONZALEZ.**—Section 943 of the Cranston-Gonzalez National Affordable Housing Act, (Public Law 101-625), is amended by—

(1) striking the phrase "thermal insulation, energy efficiency" in subparagraph (d)(1)(D); and

(2) inserting a new subparagraph (E) as follows, and relettering the existing subparagraphs accordingly:

"(E) consult with the Secretary of Energy and make recommendations regarding additional or revised standards for thermal insulation and energy efficiency applicable to manufactured housing;"

(b) **DUTIES OF THE SECRETARY.**—The Secretary shall assess the energy performance of manufactured housing and make recommendations to the Commission established under section 943 of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625) regarding thermal insulation and energy efficiency improvements applicable to manufactured housing which are technically feasible and economically justified. The Secretary shall also test the performance and determine the cost-effectiveness of manufactured housing constructed to the standards established under such section.

SEC. 6104. IMPROVING EFFICIENCY IN ENERGY-INTENSIVE INDUSTRIES.—(a) **SECRETARIAL ACTION.**—The Secretary, acting in accordance with authority contained in the Federal Nonnuclear Energy Research and Development Policy Act of 1974 (Public Law 93-577) and other applicable laws, shall—

(1) pursue a research and development program intended to improve energy efficiency and productivity in energy-intensive industries and industrial processes; and

(2) undertake joint ventures to encourage the commercialization of technologies developed under paragraph (1).

(b) **JOINT VENTURES.**—(1) The Secretary shall—

(A) conduct a competitive solicitation for proposals from specialized private firms and investors for such joint ventures under subsection (a)(2); and

(B) provide financial assistance to at least five such joint ventures.

(2) The purpose of the joint ventures shall be to design, test, and demonstrate changes to industrial processes that will result in improved energy efficiency and productivity. The joint ventures may also demonstrate other improvements of benefit to such industries so long as demonstration of energy efficiency improvements is the principal objective of the joint venture.

(3) In evaluating proposals for financial assistance and joint ventures under this section, the Secretary shall consider—

(A) whether the research and development activities conducted under this section improve the quality and energy efficiency of industries or industrial processes;

(B) the regional distribution of the energy-intensive industries and industrial processes; and

(C) whether the proposed joint venture project would be located in the region which has the energy-intensive industry and industrial processes that would benefit from the project.

(c) **AUTHORIZATION.**—There is authorized to be appropriated to the Secretary \$5,000,000 for fiscal year 1992, \$15,000,000 for fiscal year 1993, and \$25,000,000 for fiscal year 1994, to carry out the purposes of this section.

SEC. 6105. REPORT.—The Secretary, in consultation with the Council of Economic Advisors, shall submit to the Congress within one year after the date of enactment of this Act, and every three years thereafter through the year 2004, a report setting forth energy efficiency policy options that would both decrease domestic oil consumption and overall domestic energy consumption by one, two, three, and four percent, per-year per-unit of GNP, through the year 2005, below the projected consumption for 2005. The Secretary

shall evaluate, describe and rank these policy options according to their cost-effectiveness and their feasibility of implementation.

SEC. 6106. VOLUNTARY GUIDELINES FOR INDUSTRIAL PLANTS—(a) VOLUNTARY GUIDELINES FOR ENERGY EFFICIENCY AUDITING AND INSULATING.—Within one year after the date of enactment of this Act, the Secretary, after consultation with utilities, major industrial energy consumers and representatives of the insulation industry, shall establish voluntary guidelines for—

(1) the conduct of energy efficiency audits of industrial facilities to identify cost-effective opportunities to increase energy efficiency; and

(2) the installation of insulation to achieve cost-effective increases in energy efficiency in industrial facilities.

(b) EDUCATION AND TECHNICAL ASSISTANCE.—The Secretary shall conduct a program of education and technical assistance to promote the use of the voluntary guidelines established under subsection (a).

(c) ANNUAL REPORT.—The Secretary shall report annually to Congress on activities conducted pursuant to this section, including an evaluation of the effectiveness of these guidelines, and the responsiveness of the industrial sector to these guidelines.

(d) AUTHORIZATION.—There is authorized to be appropriated \$750,000 annually to carry out the purposes of this section.

SEC. 6107. ENERGY EFFICIENCY LABELING FOR WINDOWS AND WINDOW SYSTEMS.—(a) DEVELOPMENT OF PROGRAM.—Not later than one year after the date of enactment of this Act, the Secretary shall, after consulting with the National Fenestration Rating Council, industry representatives, and other appropriate organizations, provide financial and technical assistance to support the voluntary development of a national window rating program to establish energy efficiency ratings for windows and window systems. Such program shall set forth information and specifications that will enable purchasers of windows or window systems to make more informed purchasing decisions based upon the potential cost and energy savings of alternative window products.

(b) SECRETARIAL ACTION.—If a voluntary national window rating program, consistent with the objectives of subsection (a), is not established within two years of the date of the enactment of this Act, then the Secretary shall, after consulting with the National Institute of Standards and Technology, develop, within one year, a rating program to establish energy efficiency ratings for windows and window systems under section 323 of the Energy Policy and Conservation Act (hereinafter in this title referred to as EPCA) (Public Law 94-163).

(c) FEDERAL TRADE COMMISSION RULES.—The Federal Trade Commission (hereinafter in this section, the "Commission") shall prescribe labeling rules under section 324 of EPCA for the rating program established pursuant to either subsection (a) or (b) of this section, unless the Commission determines that labeling in accordance with subsections (a) or (b) of this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions with respect to any type of window or window system (or class thereof).

(d) **COVERED PRODUCTS.**—For purposes of sections 323 and 324 of EPCA, windows and window systems shall be considered covered products under section 322 of such Act unless excluded by the Commission pursuant to subsection (c) of this section.

(e) **AUTHORIZATION.**—There is authorized to be appropriated to the Secretary \$750,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 6108. ENERGY EFFICIENCY INFORMATION.—(a) **DATA ON ENERGY EFFICIENCY.**—Pursuant to section 52(a) of the Federal Energy Administration Act of 1974 (Public Law 93-275), and after consulting with State and Federal energy officials, representatives of energy-using classes and sectors, and representatives of energy policy public-interest or research organizations, the Administrator of the Energy Information Administration shall expand the scope and frequency of the data it collects and reports on energy use in the United States with the objective of significantly improving the ability to evaluate the effectiveness of the Nation's energy efficiency policies and programs. The Administrator shall take into account reporting burdens and the protection of proprietary information as required by law. In expanding the collection of such data to meet this objective, the Administrator shall consider—

(1) expanding data collection to include energy intensive sectors not presently covered in Energy Information Administration surveys;

(2) increasing the frequency with which the Energy Information Administration conducts end-use energy surveys among households, commercial buildings, and manufacturing;

(3) expanding the survey instruments to include questions regarding participation in government and utility conservation programs, the energy efficiency of existing stocks of equipment and structures, and recent changes in the technical efficiency and operating practices that affect energy use;

(4) expanding the time period for which fuel-use data is collected from individual survey respondents;

(5) expanding the sample sizes for fuel-use surveys in order to improve the accuracy of subgroups of energy users;

(6) expanding the scope and frequency of data collection on the energy efficiency and load-management programs operated by electric and gas utilities; and

(7) establishment of reporting requirements and voluntary energy efficiency improvement targets for energy intensive industries.

(b) **ANNUAL REPORT.**—The Administrator shall report annually to Congress on the energy efficiency in classes and sectors of the economy and on any data resulting from this section.

(c) **REPORT ON INDUSTRIAL REPORTING AND VOLUNTARY TARGETS.**—Not later than one year after the date of enactment of this Act the Administrator shall report to Congress on the conclusions of the Administrator's consideration of establishing reporting requirements and voluntary energy efficiency improvement targets pursuant to paragraph (a)(7) of this section, including an evaluation of the costs and benefits of such reporting requirements and voluntary energy efficiency improvement targets, and including recom-

mendations by the Administrator on proposals or activities to improve energy efficiency in energy intensive industries.

SEC. 6109. ENERGY EFFICIENCY LABELING FOR LAMPS AND LUMINAIRES.—(a) **DEVELOPMENT OF PROGRAM.**—Not later than one year after the date of enactment of this Act, and in consultation with the National Electric Manufacturers Association, industry representatives, and other appropriate organizations, the Secretary shall provide financial and technical assistance to support the voluntary development of a national energy efficiency rating and labeling program for lamps and luminaires. Such program shall set forth information and specifications that will enable purchasers of lamps and luminaires to make informed decisions among the energy efficiency and cost of alternative lamps and luminaires.

(b) **SECRETARIAL ACTION.**—If a national energy efficiency rating and labeling program consistent with the objectives of subsection (a) is not voluntarily established within two years of the date of enactment of this Act, then the Secretary shall, in consultation with the National Institute of Standards and Technology, develop, within one year, a rating program for lamps and luminaires under section 323 of EPCA (Public Law 94-163).

(c) **FEDERAL TRADE COMMISSION RULES.**—The Federal Trade Commission shall prescribe labeling rules under section 324 of EPCA for lamps and luminaires, except to the extent that the Commission determines that labeling in accordance with subsection (b) of this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions with respect to any type of lamp or luminaire (or class thereof).

(d) **COVERED PRODUCTS.**—For purposes of sections 323 and 324 of EPCA, lamps and luminaires shall be considered covered products under section 322 of such Act (42 U.S.C. 6292) unless excluded by the Commission pursuant to subsection (c) of this section.

(e) **AUTHORIZATION.**—There is authorized to be appropriated to the Secretary \$750,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 6110.—COMMERCIAL AND INDUSTRIAL EQUIPMENT STANDARDS.—Title III, part C, of the Energy Policy and Conservation Act (Public Law 94-163) is amended by adding the following new section 344A:

“SEC. 344a—(a) **DEFINITIONS.**—For the purposes of this section:

“(1) the term ‘lamp’ means incandescent, fluorescent and high intensity discharge lamps;

“(2) the term ‘small commercial package air conditioning and heating equipment’ means air-cooled, and electrically operated unitary central air conditioners and central air conditioning heat pumps for commercial application which are rated below 135,000 Btu per hour (cooling capacity); and

“(3) the term ‘large commercial package air conditioning and heating equipment’ means air-cooled, and electrically operated unitary central air conditioners and central air conditioning heat pumps for commercial application which are rated at or above 135,000 Btu per hour and below 240,000 Btu per hour (cooling capacity).”

“(4) the term ‘energy conservation standard’ means—

"(A) a performance standard that prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a product; or

"(B) a design requirement for a product.

"(b) INITIAL DETERMINATIONS.—The Secretary shall, within 12 months after the date of enactment of the National Energy Security Act of 1991, determine, with respect to: lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment; and utility distribution transformers; whether—

"(1) it is practicable to classify such products into types and to prescribe test procedures to measure energy use, energy efficiency, or estimated annual operating cost during a representative average use cycle or period of use which are not unduly burdensome to conduct; and

"(2) it is likely that energy efficiency standards would result in significant energy savings, without a reduction in performance, for those products which the Secretary has determined under paragraph (1) that it is practicable to classify and prescribe test procedures.

"(c) TEST PROCEDURES.—The Secretary shall, within 18 months after the date of enactment of the National Energy Security Act of 1991, prescribe test procedures for those lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and utility distribution transformers for which he has determined under subsection (b) that classification into types and testing procedures are practicable and that it is likely that energy efficiency standards would result in significant energy savings, without a reduction in performance. In establishing these test procedures, the Secretary shall use existing and generally accepted industry testing procedures when practicable and consistent with the objective of increasing energy efficiency to the extent technically feasible and economically justified. For small commercial package air conditioning and heating equipment and large commercial package air conditioning and heating equipment for which the Secretary establishes test procedures pursuant to this section, such test procedures shall be consistent with those generally accepted industry testing procedures or rating procedures, if any, developed by the Air Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air Conditioning Engineers as in effect on the date of the enactment of the National Energy Security Act of 1991. If such an industry test procedure or rating procedure for such small commercial package air conditioning and heating equipment or large commercial package air conditioning and heating equipment is subsequently amended the Secretary shall amend the test procedure for the product as necessary to be consistent with the amended industry test procedure or rating procedure unless he determines by rule published in the Federal Register, supported by clear and convincing evidence, that to do so would not meet the purposes and criteria of this section with respect to the product. If the Secretary issues a rule containing such a determination the rule may establish an amended test procedure for such product

that meets the purposes and criteria of this section with respect to that product.

"(d) CLASSIFICATION AND STANDARDS.—(1) The Secretary, for those products for which test procedures have been prescribed under subsection (c), shall, within eighteen months thereafter:

"(A) determine types (or classes) for lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and utility distribution transformers; and

"(B) develop energy conservation standards for each type (or class) of lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and utility distribution transformers for which such standards would be technologically feasible and economically justified. Except as provided in subsections (d)(3) (B) and (d)(3) (C) of this section, such standards shall become effective no less than eighteen months and no more than three years after development of such standards.

"(2) In establishing these standards, the Secretary shall take into consideration the criteria contained in sections 325(1) and (m) of this Act.

"(3)(A) In establishing these standards, the Secretary shall first review existing and generally accepted industry voluntary energy efficiency standards for these products, if any, to determine whether the adoption of industry standards would be consistent with the objective of increasing energy efficiency to the extent technically feasible and economically justified. In which case, the Secretary shall adopt such industry standards.

"(B) For small package air conditioning and heating equipment for which the Secretary establishes standards pursuant to this section, the Secretary shall establish such standards at the standard levels set forth for such products in ASHRAE/IES Standard 90.1 as in effect on the date of enactment of this Act. Such standards shall become effective for such products manufactured on or after January 1, 1994. Such standards levels shall be as follows:

"(i) The minimum seasonal energy efficiency ratio of three-phase electric central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 10.0 for products manufactured on or after January 1, 1994.

"(ii) The minimum seasonal energy efficiency ratio of three-phase electric central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 9.7 for products manufactured on or after January 1, 1994.

"(iii) The minimum energy efficiency ratio of central air conditioners and central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 8.9 (at a standard rating of 95 degrees Fahrenheit, dry bulb (F db)) for products manufactured on or after January 1, 1994.

"(iv) The minimum heating seasonal performance factor of three-phase electric central air conditioning heat pumps less

than 65,000 Btu per hour (cooling capacity), split systems, shall be 6.8 for products manufactured on or after January 1, 1994.

"(v) The minimum heating seasonal performance factor of three-phase electric central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 6.6 for products manufactured on or after January 1, 1994.

"(vi) The minimum coefficient of performance in the heating mode of central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 3.0 (at a high temperature rating of 47 degrees F db) for products manufactured on or after January 1, 1994.

"(C) For large package air conditioning and heating equipment for which the Secretary establishes standards pursuant to this section, the Secretary shall establish such standards at the standard levels set forth for such products in ASHRAE/IES Standard 90.1 as in effect on the date of enactment of this Act. Such standards shall become effective for such products manufactured on or after January 1, 1995. Such standard levels shall be as follows:

"(i) The minimum energy efficiency ratio of central air conditioners and central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 8.5 (at a standard rating of 95 degrees F db) for products manufactured on or after January 1, 1995.

"(ii) The minimum coefficient of performance in the heating mode of central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 2.9 for products manufactured on or after January 1, 1995.

"(D) If ASHRAE/IES Standard 90.1 as in effect on the date of enactment of the National Energy Security Act of 1991 is subsequently amended with respect to any small commercial package air conditioning and heating equipment or large commercial package air conditioning and heating equipment for which the Secretary establishes standards pursuant to this section, then the Secretary shall amend the standard for that product to the level in the amended ASHRAE/IES Standard 90.1 unless he determines by rule published in the Federal Register, supported by clear and convincing evidence, that adoption of the level in the amended ASHRAE/IES Standard 90.1 would not meet the purposes and criteria of this section with respect to such product. If the Secretary issues a rule containing such a determination, the rule may establish an amended standard for such product that meets the purposes and criteria of this section with respect to that product. A standard as amended by the Secretary under this subsection shall become effective for products manufactured on or after a date which is four years after the effective date of the relevant standard in amended ASHRAE/IES Standard 90.1, except that an amended standard issued by the Secretary pursuant to a rule under this subparagraph (d)(3)(C) shall become effective for products manufactured on or after a date which is four years after the date the rule is published in the Federal Register.

"(4) These standards shall, upon their effective date, preempt any state or local regulation concerning the energy efficiency or energy use of such products.

"(5) Except as provided in subparagraphs (d)(3) (B) through (D), the Secretary shall periodically, but at least every five years, review and update any standards established pursuant to this section, and shall reevaluate whether standards are justified for those products for which standards were not adopted.

"(e) LABELING.—(1) The Federal Trade Commission shall, within twelve months after the date on which a test procedure is prescribed by the Secretary for a product (or class thereof) under subsection (c), prescribe a labeling rule for the product (or class thereof), except to the extent that, with respect to a product (or class thereof) the Commission determines that a labeling rule is not economically or technically feasible, would not result in significant energy savings and is not necessary for informational purposes.

"(2) If the Commission determines that labeling is not necessary under paragraph (1) and the Secretary prescribes standards under subsection (d), then the Commission, within twelve months after the date on which a standard is prescribed by the Secretary, shall prescribe a labeling rule designed solely to facilitate enforcement of the requirements of this section and other applicable provisions of law. A labeling rule for small commercial package air conditioning and heating equipment and large commercial package air conditioning and heating equipment shall be designed solely to facilitate enforcement of the regulations of this section and other applicable provisions of law.

"(f) REQUIREMENT OF MANUFACTURERS.—For the purpose of requirements of this Act, manufacturers and private labelers are subject to the requirements of section 326 of this Act.

"(g) ENFORCEMENT.—After the date on which a manufacturer must provide a label for a product pursuant to subsection (e)—

"(1) each product shall be considered, for purposes of paragraphs (1) and (2) of section 332(a) of this Act a new covered product to which a rule under section 324 of this Act applies; and

"(2) it shall be unlawful for any manufacturer or private labeler to distribute in commerce any new product manufactured after this date which is not in conformity with the applicable energy conservation standard prescribed for the product (or class thereof) under subsection (d). For purposes of section 333 of this Act, this paragraph shall be considered to be a part of section 332 of this Act.

"(h) ENERGY EFFICIENCY LABELING FOR COMMERCIAL OFFICE EQUIPMENT.—(1) DEVELOPMENT OF PROGRAM.—Not later than one year after the date of enactment of the National Energy Security Act of 1991, and after consulting with appropriate industry representatives, the Secretary shall provide financial and technical assistance to support the voluntary development of a national energy efficiency rating and labeling program including any necessary test procedures for commercial office equipment that is widely used and for which there is a potential for significant energy savings. The program shall set forth information and specifications that will enable purchasers of office equipment to make informed decisions

about the energy efficiency and costs of alternative commercial office equipment.

"(2) SECRETARIAL ACTION.—If a national energy efficiency rating and labeling program consistent with the objectives of paragraph (1) is not voluntarily established within two years of the date of enactment of this Act, then the Secretary shall, after consulting with the National Institute of Standards and Technology, prescribe, within one year, test procedures for such commercial office equipment under section 323 of this Act.

"(3) FEDERAL TRADE COMMISSION RULES.—The Federal Trade Commission (hereinafter in this section, the "Commission") shall prescribe labeling rules under section 324 of this Act for commercial office equipment, except to the extent that the Commission determines that labeling in accordance with subsection (b) of this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions with respect to commercial office equipment (or class thereof).

"(4) COVERED PRODUCTS.—For purposes of sections 323 and 324 of this Act, commercial office equipment shall be considered covered products under section 322 of this Act unless excluded by the Commission pursuant to subsection (c).

"(5) AUTHORIZATION.—There is authorized to be appropriated to the Secretary such sums as are necessary to carry out the purposes of this section.

"(i) STUDY OF UTILITY DISTRIBUTION TRANSFORMERS.—

"(1) Not later than eighteen months after the date of the enactment of the National Energy Security Act of 1991, the Secretary shall evaluate the practicability and cost-effectiveness and potential energy savings of replacing or upgrading existing utility distribution transformers during routine maintenance.

"(2) The Secretary shall report the findings of his evaluation to Congress with recommendations on how such energy savings, if any, could be achieved."

SEC 6111. ENERGY EFFICIENCY OF SHOWERHEADS.

(a) STATEMENT OF PURPOSE.—Section 2 of EPCA (Public Law 94-163) is amended by—

- (1) striking "and" at the end of paragraph (6);
- (2) striking the period at the end of paragraph (7) and inserting "; and"; and
- (3) adding at the end thereof the following new paragraph:
 "(8) to conserve energy and water by improving the water efficiency of showerheads."

(b) DEFINITIONS.—Section 321(a) of EPCA (Public Law 94-163), is amended by adding at the end thereof the following new paragraph:

"(30) the term 'total water use' means the quantity of water directly used by a showerhead, determined in accordance with test procedures under section 323."

(c) COVERAGE.—Section 322(a) of EPCA (Public Law 94-163), is amended by—

- (1) redesignating paragraph (14) as paragraph (15); and
- (2) inserting after paragraph (13) the following new paragraph:

"(14) Showerheads, except safety shower showerheads."

(d) **TEST PROCEDURES.**—Section 323(b)(3) of EPCA is amended by striking "or estimated annual operating cost" and inserting "estimated annual operating cost, or, in the case of showerheads, total water use, in accordance with applicable American National Standards Institute (ANSI) flow rate standards."

(e) **LABELING.**—Section 324 of EPCA (Public Law 94-163), is amended—

(1) in subsection (a)(2) by adding at the end thereof the following new subparagraph:

"(C) The Commission shall prescribe labeling rules under this section applicable to the covered product specified in paragraph (14) of section 322(a), requiring that a label state whether the product meets the standards under section 325(i), in accordance with American National Standards Institute (ANSI) marking and labeling requirements.";

(2) in subsection (a)(3) by striking "paragraph (14)" and inserting "paragraph (15)";

(3) in subsection (b)(1)(B) by striking "paragraph (14)" and inserting "paragraph (15)";

(4) in subsection (b)(3) by striking "paragraph (14)" and inserting "paragraph (15)"; and

(5) in subsection (b)(5) by striking "paragraph (14)" and inserting "paragraph (15)".

(f) **STANDARDS.**—Section 325 of EPCA (Public Law 94-163), is amended—

(1) by redesignating subsections (i), (j), (k), (l), (m), (n), (o), (p), and (q) as subsections (j), (k), (l), (m), (n), (o), (p), (q), and (r), respectively; and

(2) by inserting after subsection (h) the following new subsection:

"(i) **STANDARDS FOR SHOWERHEADS.**—(1) For a showerhead manufactured on or after July 1, 1992, the standard shall be one that ensures the maintenance of public health and safety, allowing a maximum rate of water use of—

"(A) 2.5 gallons per minute, when measured at a flowing water pressure of 80 pounds per square inch; or

"(B) if before March 1, 1992, the American National Standards Institute (ANSI) publishes an amended standard for showerheads prescribing a maximum rate of water use that is less than the rate prescribed by the ANSI standard in effect on the date of enactment of the National Energy Security Act of 1991, the rate prescribed in the amended standard becomes effective.

"(2)(A) If, after July 1, 1992, ANSI publishes an amended standard different from that in effect pursuant to paragraph (1), the Secretary, not later than 180 days after publication of the amended standard, shall publish a notice of the amended standard, and, subject to subparagraph (B), the amended standard shall be in effect for showerheads manufactured on or after the date that is 90 days after the date of the notice.

"(B) The Secretary may not prescribe an amended standard that increases the maximum rate of water use of showerheads over the

rate allowed by the standard established under paragraph (1), unless the Secretary determines that it is in the interest of public health and safety.”.

(g) **EFFECT ON OTHER LAW.**—Section 327 of EPCA (Public Law 94-163), is amended—

(1) in subsection (c)—

(A) by striking “or energy use of such covered product” and inserting “energy use or total water use of the covered product”;

(B) by striking “or” at the end of paragraph (2);

(C) by striking the period at the end of paragraph (3) and inserting “; or”; and

(D) by adding at the end thereof the following new paragraph:

“(4) is a State, regional, or local regulation that establishes flow rate requirements for showerheads that was prescribed or enacted before June 15, 1991.”; and

(2) by adding at the end thereof the following new subsection:

“(h) **LABELING OF SHOWERHEADS.**—No State, regional, or local regulation concerning the labeling of showerheads shall be effective on or after the date that the Commission prescribes a label for showerheads pursuant to section 324(a)(2)(C).”.

Subtitle B—Federal Energy Management

SEC. 6201. FEDERAL ENERGY MANAGEMENT AMENDMENTS.—Part 3 of title V of the National Energy Conservation Policy Act (NECPA) (Public Law 95-619), as amended, is further amended as follows:

(a) In section 543—(1) Strike subsection (a) and insert the following new text in lieu thereof:

“(a) **ENERGY MANAGEMENT REQUIREMENT FOR FEDERAL BUILDINGS.**—(1) Not later than January 1, 2000, each Federal agency shall, to the maximum extent practicable, install in Federal buildings under the control of such agency in the United States, all energy conservation measures with payback periods of less than ten years as calculated using the methods and procedures developed pursuant to section 544. Within two years after the date of enactment of the National Energy Security Act of 1991, each agency shall submit to the Secretary a list of projects meeting the ten-year payback criterion, the energy that each project will save and total energy and cost savings involved.

“(2) An agency may exclude from the requirements of paragraph (1) any Federal building or collection of Federal buildings, and the associated energy consumption and gross square footage, if the head of such agency finds that compliance with the requirements of paragraph (1) would be impracticable. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such Federal buildings or collection of Federal buildings, the type and amount of energy consumed, the technical feasibility of making the desired changes, or the unique character of many facilities operated by the Departments of Defense and Energy. Each agency shall identify and list in each report made under section 548, the Federal buildings designated by it for such exclusion. The

Secretary shall review such findings for consistency with the impracticability standards set forth herein, and may within 90 days after receipt of the findings, reverse a finding of impracticability, in which case the agency shall comply with the requirements of paragraph (1). This section shall not apply to an agency's facilities that generate or transmit electric energy, nor to the uranium enrichment facilities operated by the Department of Energy.”;

(2) In subsection (b):

(A) after the words “subsection (a),” insert the following: “The Secretary of Energy shall consult with the Secretary of Defense and the Administrator of the General Services Administration in developing guidelines for the implementation of this Part, and”;

(B) strike the phrase “Federal Energy Management Improvement Act of 1988,” in paragraph (1) and insert in lieu thereof “National Energy Security Act of 1991, and submit to the Secretary of Energy”;

(C) after the words “high priority projects,” insert the following: “and such plan shall include steps to take maximum advantage of contracts authorized under title VIII of this Act (42 U.S.C. 8287 et seq.), financial incentives, and other services provided by utilities for efficiency investment and other forms of financing to reduce the direct costs to the government”;

(D) at the end of paragraph (2), strike the semicolon and insert the following: “, and update such surveys periodically, but not less than every three years”;

(E) replace paragraph (3) with the following new paragraph:

“(3) using such surveys, determine the cost and payback period of energy conservation measures likely to achieve the goals of this section”;

(F) insert a new paragraph (4) as follows, and renumber paragraph (4) as “(5)”:

“(4) install those energy conservation measures that will attain the requirements of this section in a cost-effective manner as defined in section 544, and”.

(b) In section 544—

(1) strike “National Bureau of Standards,” in subsection (a) and insert in lieu thereof “National Institute of Standards and Technology”;

(2) strike all after the word “each”, in paragraph (b)(2) and insert in lieu thereof: “agency shall, after January 1, 1994, fully consider the energy efficiency of all potential building space at the time of renewing or entering into a new lease. Further, all government leased space constructed after January 1, 1994, shall meet model Federal energy conservation performance standards for new commercial buildings promulgated pursuant to Section 304 of the Energy Conservation and Production Act (Public Law 94-385).”.

(c) In section 545 add after the word “measures” the following: “as needed to meet the requirements of section 543.”.

(d) In section 546 strike subsection (b) and insert in lieu thereof the following:

“(b) IMPLEMENTATION.—To facilitate the financing of energy conservation measures, each Federal agency shall promote the use of contracts authorized by title VIII of this Act (42 U.S.C. 8287 et seq.). The Secretary, in consultation with the Secretary of Defense and the Administrator of the General Services Administration, within six months after the date of the enactment of the National Energy Security Act of 1991, shall develop appropriate procedures and methods for use by Federal agencies to select energy service contractors that will achieve the intent of this section in a cost-effective manner. Notwithstanding any other procurement laws and regulations, such procedures and methods shall apply to the selection of energy service contractors by each Federal agency.”

(e) In section 548—

(1) strike the word “Each” in subsection (a) and insert in lieu thereof the following: “In addition to the plan required to be submitted to the Secretary pursuant to section 543(b)(1), each”;

(2) insert the phrase “by April 2 of each year,” after the word “annually” in subsection (b); and

(3) insert the words “by each agency”, after the words “under this part” in subsection (b)(1).

(f) At the end of part 3—add the following new sections:

“SEC. 552. UTILITY INCENTIVE PROGRAMS.—Federal agencies are permitted and encouraged to participate in programs conducted by any gas or electric utility for the management of energy demand or for energy conservation in Federally owned or leased facilities. Federal agencies may accept incentives designed to encourage energy demand management or energy conservation, generally available from any such utility to its customers, to adopt technologies and practices that are determined to be cost-effective.

“SEC. 553. SHARED ENERGY SAVINGS.—(a) The Secretary shall develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of these contracts and will reduce the administrative effort and cost on the part of the government as well as the private customers.

“(b)(1) In carrying out subsection (a), the Secretary may:

“(A) request statements of qualifications, including financial and performance information, from firms engaged in providing shared energy savings contracting;

“(B) designate from the statements received, with an update at least annually, those firms that are presumptively qualified to provide shared energy savings services;

“(C) select at least three firms from the qualifying list to conduct discussions concerning a particular proposed project, including requesting a technical and price proposal from such selected firms for such project; and

“(D) select from such firms the most qualified firm to provide shared energy savings services pursuant to a contractual arrangement that the Secretary determines is fair and reasonable, taking into account the estimated value of the services to be rendered and the scope and nature of the project.

"(2) In carrying out subsection (a), the Secretary may also provide for the direct negotiation by departments, agencies, and instrumentalities, of contracts with shared energy savings contractors that have been selected competitively and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

"SEC. 554. FEDERAL PRODUCT SCHEDULE.—Not later than two years after the date of enactment of the National Energy Security Act of 1991, the Administrator of the General Services Administration, in consultation with the Secretary, shall conduct an analysis of significant energy consuming products in the Federal product schedule and develop and implement a method to identify those products which offer cost-effective opportunities to reduce energy consumption and costs. The Administrator shall also issue guidelines for users of the Federal Product Schedule to encourage the purchase of identified energy efficient models.

"SEC. 555. PURCHASE OF FEDERAL VEHICLES.—The Administrator of the General Services Administration, through the Automotive Commodity Center, in evaluating and accepting bids for the purchase of passenger vehicles and light trucks to meet specified requirements, shall consider the fuel efficiency of the passenger vehicles and light trucks offered in the bid, and the probable fuel and cost savings to the Federal Government over the expected term of Federal use of such passenger vehicles and light trucks.

"SEC. 556. FEDERAL ENERGY EFFICIENCY PROJECTS FUNDING.—(a) IN GENERAL.—Not later than one year after the date of enactment of the National Energy Security Act of 1991, the Secretary shall establish guidelines for the transfer of up to \$1,000,000 per project to encourage any Federal agency to undertake energy efficiency projects in Federally owned facilities.

"(b) PROJECT SELECTION.—The Secretary shall establish procedures for the receipt of proposals under this section. The Secretary shall consider the following factors in determining whether to provide funding under subsection (a):

"(1) the cost-effectiveness of the project;

"(2) the proportion of energy and cost savings anticipated to the Federal Government;

"(3) the amount of funding committed to the project by the agency requesting financial assistance;

"(4) the extent that a proposal leverages financing from other non-Federal sources; and

"(5) any other factor which the Secretary determines will result in the greatest amount of energy and cost savings to the Federal Government.

"(c) REPORTS.—The Secretary shall report annually to Congress, in the supporting documents accompanying the President's budget, on the activities under this section. The report shall include the projects funded and the projected energy and cost savings from installed measures.

"(d) AUTHORIZATION.—For purposes of this subsection, there is authorized to be appropriated, and to remain available until expended, not more than \$50,000,000.

"SEC. 557. FINANCIAL INCENTIVE PROGRAM FOR FACILITY ENERGY MANAGERS.—(1) The Secretary shall establish a financial bonus

program, not to exceed \$5,000 per award, to reward facility energy managers for outstanding energy savings in Federal agencies.

"(2) Not later than June 1, 1992, the Secretary shall issue procedures for the establishment of a bonus program, including the criteria to be used in selecting outstanding facility energy managers. Such criteria shall include, but not be limited to, evident success in generating utility incentives and shared energy saving contracts and, the amount of energy saved by conservation and energy efficiency projects.

"(3) Each year the Secretary shall publish and disseminate to Federal agencies a report highlighting the achievements of bonus award winners.

"(4) There is authorized to be appropriated to carry out this subsection not more than \$250,000 for each of the fiscal years 1992, 1993, and 1994."

(g) CONFORMING AMENDMENT.—The National Energy Conservation Policy Act (Public Law 95-619) is further amended by adding in the Table of Contents at the end of title V, part 3, the following items:

"Sec. 552. Utility incentive programs.

"Sec. 553. Shared energy savings.

"Sec. 554. Federal product schedule.

"Sec. 555. Purchase of Federal vehicles.

"Sec. 556. Federal energy efficiency projects funding.

"Sec. 557. Financial incentive program for facility energy managers."

SEC. 6202. PLAN REGARDING DEMONSTRATION OF NEW TECHNOLOGY.—(a) PLAN.—Within one year after the date of the enactment of this Act, the Secretary shall submit a plan to Congress for the demonstration in Federally owned facilities of energy efficiency and renewable energy technologies. The technologies shall be those technologies, as determined by the Secretary, that are ready for commercial demonstration. The plan shall include—

(1) a listing of those technologies with specific candidate sites for the demonstration;

(2) the energy, environmental, cost savings or other expected benefits;

(3) a timetable for implementation; and

(4) a process for evaluation of the performance of the technologies.

(b) UPDATE.—The plan shall be updated every two years.

SEC. 6203. STUDY OF FEDERAL PURCHASING POWER.

(a) STUDY.—The Secretary shall conduct a study to evaluate the potential use of the purchasing power of the Federal Government to promote the development and commercialization of energy efficient products. The study shall identify products for which there is a high potential for Federal purchasing power to substantially promote their development and commercialization, and shall include a plan to develop such potential. The study shall be conducted in consultation with utilities, manufacturers, and appropriate nonprofit organizations concerned with energy efficiency.

(b) REPORT.—The Secretary shall report to Congress on the results of the study within two years of the date of the enactment of this Act.

(c) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Subtitle C—Utilities

SEC. 6301. ENCOURAGEMENT OF INVESTMENTS IN CONSERVATION AND ENERGY EFFICIENCY RESOURCES AND STUDY OF CERTAIN STATE RATEMAKING POLICIES.—(a) **AMENDMENT TO THE PUBLIC UTILITY REGULATORY POLICIES ACT.**—The Public Utility Regulatory Policies Act of 1978 (Public Law 95-617), as amended, is further amended by inserting the following new paragraph at the end of section 111:

“(7) **ENCOURAGEMENT OF INVESTMENTS IN CONSERVATION AND ENERGY EFFICIENCY RESOURCES.**—

“(A) The rates allowed to be charged by a State regulated electric utility shall be such that the utility’s investment in and expenditures for energy conservation, energy efficiency resources and other demand side management measures are at least as profitable, taking into account income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generating equipment.

“(B)(i) The rates allowed to be charged by a State-regulated electric utility shall be such that the utility is encouraged to make investments and expenditures for all cost-effective improvements in the energy efficiency of power generation, transmission and distribution.

“(ii) For purposes of meeting the standard provided in clause (i) of this subparagraph, each State regulatory authority shall consider the disincentives caused by existing ratemaking policies, as well as incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution technologies.

“(C)(i) Each State regulatory authority shall require each electric utility for which it has ratemaking authority to employ a planning and selection process for new energy resources that evaluates the full range of alternatives, including new power supplies, energy conservation and efficiency, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

“(ii) All plans or filings before a State regulatory authority to meet the requirements of clause (i) of this subparagraph must be updated on a regular basis, must provide

the opportunity for public participation and comment, and contain a requirement that the plan be implemented.

"(iii) For purposes of clause (i) of this subparagraph, the term "system cost" shall mean all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, transportation, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply.

"(D) For purposes of implementing the provisions of this paragraph, any reference contained in this title to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of the National Energy Security Act of 1991."

(b) **REPORT.**—Not later than two years after the date of enactment of this Act, the Secretary shall submit a report to the President and to the Congress containing—

(1) a survey of all State laws, regulations, practices, and policies under which State regulatory authorities require or permit rates charged by an electric utility to reflect least-cost planning;

(2) an evaluation by the Secretary of whether, and to what extent, least-cost planning is likely to result in—

(A) higher or lower electricity costs to an electric utility's ultimate consumers or to classes or groups of such consumers;

(B) enhanced or reduced reliability of electric service; and

(C) increased or decreased dependence on particular energy resources; and

(3) an evaluation by the Secretary of whether, and to what extent, ratemaking methodologies implementing least-cost planning adequately take into account the impact of such measures on electric utilities' costs, operations, and rate of return on investment.

(c) **DEFINITION.**—For purposes of subsection (b), the term "least-cost planning" means any standard, regulation, practice, or policy by which a State regulatory authority considers, or requires a State regulated electric utility to consider or implement, a plan for action (including, but not limited to, the construction of or purchase of electric energy from new generation facilities and investment in or expenditures for conservation, energy efficiency resources, or other demand-side management measures) to be taken by a State regulated electric utility for purposes of providing adequate and reliable service to its electric customers with the incurrence of lowest costs by such utility and its customers.

SEC. 6302. CONSERVATION GRANTS TO STATE REGULATORY AUTHORITIES.—(a) **CONSERVATION GRANTS.**—The Secretary is authorized in accordance with the provisions of this section to provide grants to State regulatory authorities in an amount not to exceed \$500,000 per authority, for purposes of encouraging the consideration of conservation, energy efficiency resources and other demand side management measures as a mechanism for modifying future electricity demand.

(b) **PLAN.**—A State regulatory authority wishing to receive a grant under this section shall submit a plan to the Secretary that specifies the actions such authority proposes to take that would achieve the purposes of this section.

(c) **SECRETARIAL ACTION.**—In determining whether, and in what amount, to provide a grant to a State regulatory authority under this section the Secretary shall consider, in addition to other appropriate factors, the actions proposed by the State regulatory authority—

(1) to consider implementation of the ratemaking standard established in section 111(d)(7) of the Public Utility Regulatory Policies Act of 1978; and

(2) to achieve the purposes of this section.

(d) **RECORDKEEPING.**—Each State regulatory authority that receives a grant under this section shall keep such records as the Secretary shall require.

(e) **RULES.**—The Secretary may prescribe such rules as may be necessary or appropriate for carrying out the provisions of this section.

(f) **DEFINITIONS.**—For purposes of this section, the term “State regulatory authority” shall have the same meaning as defined in section 3 of the Public Utility Regulatory Policies Act of 1978.

(g) **AUTHORIZATION.**—There is authorized to be appropriated \$5,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 6303. INTEGRATED RESOURCE PLANNING BY CUSTOMERS OF POWER MARKETING ADMINISTRATIONS.—(a) **IN GENERAL.**—Within six months after the date of enactment of this Act, the Southwestern Power Administration and the Southeastern Power Administration (hereinafter PMAs) shall each initiate a proceeding for purposes of considering the adoption of a requirement that each long-term firm power service contract entered into or amended subsequent to one year from the date of enactment of this Act between a nonregulated electric utility and such PMA contain an article requiring such utility to develop and implement to the extent practicable an integrated resource planning program. For purposes of this section—

(1) A “long-term firm power service contract” shall mean any contract for the sale by a PMA of firm capacity, with or without energy, which is to be delivered over a period of more than one year;

(2) The term “non-regulated electric utility” shall have the same meaning as provided in section 3(9) of the Public Utility Regulatory Policies Act of 1978. In the case of a contract between a PMA and a joint action agency or similar entity, the term shall include the entity’s distribution or user members; and

(3)(A) An “integrated resource planning program” shall be one under which a nonregulated utility engages in a planning and selection process for new energy resources that evaluates the full range of alternatives, including new power supplies, energy conservation and efficiency, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall

take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk, and shall treat demand and supply resources on a consistent and integrated basis.

(B) For purposes of this paragraph, the term "system cost" shall mean all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, transportation, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply.

(b) **CONSIDERATIONS.**—As part of a proceeding under subsection (a), each PMA shall consider a requirement that each contract article referred to in subsection (a) shall—

(1) require the nonregulated electric utility to establish an integrated resource planning program with specific goals;

(2) contain time schedules for meeting program goals and delineate actions to be taken in the event such goals are not met. Such actions may provide (A) for suspension of capacity and energy deliveries that would otherwise be supplied to the nonregulated electric utility under such contract, (B) for liquidated damages, and (C) for termination of such contract if compliance is not achieved within the period stated in such contract; and

(3) provide for review and modification of such program by the nonregulated utility every three years.

(c) **PROCEDURES.**—A proceeding under subsection (a) shall be conducted in accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553). Nothing in this section shall require a PMA to adopt either in whole or in part the requirements for contract articles described in subsections (a) and (b). To the extent that a PMA decides to adopt in whole or in part such requirements in a proceeding under subsection (a), it shall promulgate regulations implementing such requirements as part of the same proceeding.

(d) **DETERMINATIONS.**—If the Secretary determines that a PMA has conducted or is in the process of conducting, as of the date of enactment of this section, a proceeding that meets the requirements of this section, such PMA shall not be required to initiate a new proceeding, and the requirements of this section shall be deemed satisfied with respect to such PMA.

(e) **EXCEPTION.**—Nothing in this section shall authorize a PMA to require an article as described in subsection (b) of this section in a utility's long-term firm power services contract if any Federal agency requires such utility to prepare an integrated resource planning program.

SEC. 6304. TENNESSEE VALLEY AUTHORITY INTEGRATED RESOURCE PLANNING AND IMPLEMENTATION.—(a) **IN GENERAL.**—In the exercise of its functions the Tennessee Valley Authority shall employ an integrated resource planning program.

(b) **DEFINITIONS.**—For the purposes of this section the term: (1) "integrated resource planning program" shall be a program under which the Tennessee Valley Authority engages in a planning and selection process for new energy resources that evaluates the full range of existing and incremental resources, including new power

supplies, energy conservation and efficiency, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis; and (2) "system cost" shall mean all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, transportation, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply.

(c) **ASSISTANCE TO DISTRIBUTORS.**—The Tennessee Valley Authority shall implement the provisions of this section in cooperation with its distributors and shall provide appropriate assistance to them. Such assistance may include publications, workshops, conferences, one-on-one assistance, equipment loans, technology-assessment studies, marketing studies, and other appropriate mechanisms to transfer information on energy-efficiency and renewable energy options and programs to customers.

(d) **PUBLIC COMMENT.**—Prior to the selection and addition of major new energy resources on the TVA system, TVA shall provide the public an opportunity for review and comment in the selection process.

Subtitle D—Used Oil Energy Production

SEC. 6401. PURPOSE.—The purpose of this subtitle is to promote the refining, re-refining and reprocessing of used lubricating oil into fuels and other petroleum products.

SEC. 6402. REQUIREMENTS FOR ENERGY PRODUCTION FROM USED OIL.—Section 383 of the Energy Policy and Conservation Act (EPCA) (Public Law 94-163) is amended—

(a) in subsection (c) by—

(1) striking "As soon as practicable after the date of enactment of this Act" and inserting "Not less than 15 months after the date of enactment of the National Energy Security Act of 1991"; and

(2) striking "National Bureau of Standards" each place it appears and inserting "National Institute of Standards and Technology"; and

(b) by adding at the end thereof the following new subsection:

"(g) **MARKET INCENTIVES FOR THE REUSE OF USED OIL.**—

"(1) **REQUIREMENTS.**—(A) Beginning not later than 18 months after the date of the enactment of the National Energy Security Act of 1991, a producer or importer of 100,000 gallons or more per year of lubricating oil shall each year either refine, re-refine, or reprocess into petroleum products, including fuels, using a method described in subparagraph (B), an amount of used oil equal to at least that amount of oil determined by—

"(i) multiplying the lubricating oil produced or imported that year by such person, by

"(ii) the percentage established by the Secretary under paragraph (2).

"(B) A producer or importer of lubricating oil may comply with this paragraph by—

"(i) refining, re-refining, or reprocessing used oil for purposes of producing petroleum products, including fuels; or

"(ii) purchasing credits under the credit system established pursuant to paragraph (3).

"(2) ESTABLISHMENT OF REUSE PERCENTAGE.—The Secretary shall establish, on an annual basis, a percentage for use under paragraph (1). The percentage applicable during the first year that the requirement established by paragraph (1) is in effect, shall be a percentage that is equal to the reuse rate for lubricating oil that exists on the date of the enactment of the National Energy Security Act of 1991. Such rate shall be determined by using data for the most recent year for which data are available. Through the year 2000, the percentage shall be an additional two percentage points higher than the actual percentage for the previous year as determined by the Secretary.

"(3) REGULATIONS.—(A) IN GENERAL.—Not later than 18 months after the date of the enactment of the National Energy Security Act of 1991, the Secretary shall promulgate regulations to implement these requirements. These regulations shall cover:

"(i) producers or importers of lubricating oil;

"(ii) generators or collectors of used oil;

"(iii) a system, including permits, by which refiners, re-refiners and reproducers of used oil may create credits which may be purchased by producers and importers of lubricating oil for the purpose of complying with subparagraph (1)(B);

"(iv) enforcement;

"(v) record-keeping;

"(vi) any other requirement which the Secretary considers necessary for administering the program set forth by this subsection; and

"(vii) prohibitions on the mixing of used oil with hazardous wastes or other physical or chemical impurities not associated with its use as a lubricating oil, and the creation of credits from such mixed used oil.

"(B) EXEMPTIONS.—

"(i) This subsection shall not apply to a facility:

"(aa) that is classified as an S.I.C. number 2911 facility under the Office of Management and Budget Standard Classification Manual and that refines used oil into fuel or other petroleum products, the amount of which is equal to no more than the amount of used oil that the owner of the facility is required to refine or otherwise reuse under paragraph (1)(A).

"(bb) that is classified as an S.I.C. number 2899, or S.I.C. number 2992 facility under the Office of Man-

agement and Budget Standard Classification Manual and that compounds or blends lubricating base oil into finished lubricant products as its principal activity, provided that such facility has a contract to reprocess a customer's used lubricant, and does not take title to such lubricant, and such reprocessed lubricant product is returned to the customer.

"(ii) This subsection shall not apply to used oil that is generated on-site for on-site energy production activities, including storage, use, and transportation, carried out at a facility that is classified as an S.I.C. number 4911 facility under the Office of Management and Budget Standard Classification Manual.

"(iii) The Secretary shall promulgate regulations establishing requirements for exempt refineries that refine used oil. The regulations shall cover record-keeping, testing, and such other matters as the Secretary determines are necessary and appropriate for refining used oil at exempt refineries.

"(4) DEFINITIONS.—For purposes of this subsection, the term:

"(A) 'credit' means a legal record of used oil refined, re-refined or reprocessed in accordance with this subsection for purposes of complying with paragraph (1);

"(B) 'producer' with respect to lubricating oil means any person who produces a lubricant base stock from crude oil. Such production does not include the re-refining of used oil;

"(C) 'importer' with respect to lubricating oil means any person who imports a lubricant base stock or lubricating oil, except for lubricating oil contained in transportation vehicles or other machinery;

"(D) 'lubricant base stock' means oil from which lubricating oil is made after introduction of additives;

"(E) 'generator' and 'collector' mean any person who collects, stores, accumulates, or otherwise generates used oil. Such terms do not include an individual who generates used oil by removing such oil from the engine of a light duty motor vehicle or household appliance owned by that individual;

"(F) 're-refiner' and 'reprocessor' mean any person who produces lubricating oils, fuels, or other petroleum products through the processing of used oil; and

"(G) 'refiner' means any owner or operator of a facility that is classified as an S.I.C. 2911 facility under the Office of Management and Budget Standard Classification Manual.

"(5) AUTHORIZATIONS.—(A) There is authorized to be appropriated to the Secretary of Energy \$2,000,000 to carry out this subsection.

"(B) There is authorized to be appropriated to the Secretary of Commerce for use by the National Institute of Standards and Technology \$3,000,000 to carry out its responsibilities under this section.

"(6) REPORT.—One year after the date of enactment of this subsection, and annually thereafter, the Secretary shall submit a report to the House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate on the implementation and operation of this subsection."

SEC. 6403. LISTING OR IDENTIFICATION OF USED OIL.—Section 3001 of the Solid Waste Disposal Act is amended by adding at the end the following:

"(j) USED OIL.—Notwithstanding this Act or any other provision of law, the Administrator shall not list or identify used oil as a hazardous waste under this subtitle, nor shall used oil otherwise be deemed to be a hazardous waste under this subtitle."

SEC. 6404. SUNSET PROVISION.—The provisions of this subtitle expire five years after the date of enactment of this Act.

Subtitle E—State, Local Insular, and Tribal Energy Assistance

SEC. 6501. INSULAR AREAS ENERGY ASSISTANCE PROGRAM.—(a) FINANCIAL ASSISTANCE.—(1) The Secretary, pursuant to the Federal Nonnuclear Energy Research and Development Policy Act of 1974 (Public Law 93-577), may grant financial assistance to Insular area governments or private sector persons working in cooperation with Insular area governments to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy measures which reduce the dependency of the Insular areas on imported fuels and promote development in the Insular areas.

(2) Any applicant for financial assistance under this section must evidence coordination and cooperation with, and support from, the affected local energy institutions.

(3) In determining the amount of financial assistance to be provided for a proposed project, the Secretary shall consider—

(A) whether the measure will reduce the relative dependence of the Insular area on imported fuels;

(B) the ease and costs of operation and maintenance of any facilities contemplated as a part of the project;

(C) whether the project will rely on the use of conservation measures or indigenous, renewable energy resources that were identified in the 1982 Territorial Energy Assessment or are identified by the Secretary as consistent with the purpose of this section;

(D) whether the measure will contribute significantly to development or the quality of the environment in the Insular area; and

(E) any other factors which the Secretary may determine to be relevant to a particular project.

(4) The Secretary shall require at least 20 per centum of the costs of any project under this section to be provided from non-Federal sources. Such cost sharing may be in the form of in-kind services, donated equipment, or any combination thereof.

(b) DEFINITIONS.—For the purpose of this section, the term—

(1) "Insular area government" means American Samoa government, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, Federated States of Micronesia,

Government of Guam, Republic of the Marshall Islands, Republic of Palau, and United States Virgin Islands; and

(2) "1982 Territorial Energy Assessment" means the assessment prepared by the Department of Energy pursuant to the Omnibus Territorial Act. (Public Law 96-597, as amended).

"SEC. 6502. STATE BUILDINGS ENERGY INCENTIVE FUND.—Title III, part D, of the Energy Policy and Conservation Act (Public Law 94-163) is amended as follows:

(a) Designate the existing text of subsection 365(f) as paragraph (1) and insert the following new paragraph (2):

"(2) In addition to the amounts authorized to be appropriated under paragraph (1), there is authorized to be appropriated such sums as may be necessary, to remain available until expended, to carry out the purposes of section 363(f)."; and

(b) at the end of section 363 add the following new subsection (f):

"(f) If the Secretary determines that a State has demonstrated a commitment to improving the energy efficiency of buildings within the State, then beginning in fiscal year 1993, the Secretary may allocate funds appropriated pursuant to section 365(f)(2) to provide up to \$1,000,000 to such State for deposit into a state revolving fund designed to finance energy efficiency improvements in State and local government buildings in such State. In making this determination the Secretary shall consider whether—

"(1) such State, or a majority of the units of local government with jurisdiction over building energy codes within such State, have adopted building codes at least as stringent as the industry voluntary building energy code as defined under title III of this Act;

"(2) such State has a program to finance energy efficiency improvement projects in State and local government facilities and buildings that includes a revolving fund to finance such projects; and

"(3) such State has raised funding from non-Federal sources, including but not limited to, oil overcharge funds, State or local government appropriations, or utility contributions, sufficient to provide at least 75 percent of the total funds provided for deposit into such revolving fund."

SEC. 6503. PRIVATE SECTOR INVESTMENTS IN LOW INCOME WEATHERIZATION.—Title IV of the Energy Conservation and Production Act (ECPA) (Public Law 94-385) is amended by adding the following new sections 414A and 414B:

"SEC. 414A. PRIVATE SECTOR INVESTMENTS.—(a) IN GENERAL.—The Secretary shall provide financial assistance to recipients of Federal financial assistance or financial assistance from States pursuant to sections 413 and 414 of this title to pay for the costs of the development and the initial implementation of partnerships, agreements or other arrangements with utilities, private sector interests or other institutions, pursuant to which financial assistance would be made available to make energy conservation improvements in low income housing. Financial assistance provided by the Secretary under this section may be used for the negotiation of partnerships, agreements and other arrangements; the presentation of arguments before State or local agencies; expert advice on the develop-

ment of partnerships, agreements and other arrangements; or other activities reasonably associated with the development and initial implementation of such arrangements.

"(b) **CONDITIONS.**—Financial assistance provided under this section to institutions other than States shall, to the extent practicable, coincide with the timing of awards such institutions are receiving under sections 413 or 414 of this title. No less than 80 percent of the funds awarded under this section shall be provided to entities other than states. Recipients of assistance under this section shall have up to three years to carry out projects undertaken with such assistance.

"(c) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

"**SEC. 414B. TECHNICAL TRANSFER GRANTS.**—(a) **IN GENERAL.**—The Secretary may provide financial assistance to recipients of Federal financial assistance or financial assistance from States pursuant to sections 413 and 414 of this title for the purpose of: evaluating technical and management measures which increase program and/or private entity performance in weatherizing low income housing; producing technical information for use by persons involved in weatherizing low income housing; exchanging information; and conducting training programs for persons involved in weatherizing low income housing. No less than 50 percent of the funds granted under this section shall be provided to entities other than states. Recipients of technical transfer grants may assign all or part of work under the grants to non-profit entities.

"(b) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section."

SEC. 6504. TRAINING OF BUILDING DESIGNERS AND CONTRACTORS.—Section 362 of the Energy Policy and Conservation Act (Public Law 94-163) is amended by adding the following new paragraph at the end of subsection (d):

"(15) programs to provide training and education to building designers and contractors involved in building design or in the sale, installation and maintenance of energy systems and equipment. Such programs shall (A) enlist appropriate trade and professional organizations in the development and financing of this program; and (B) shall also include training workshops, practice manuals, and testing for each area of energy efficiency technology. Designers and contractors who have successfully completed a training course operated pursuant to this section shall be presented a certificate of completion at the end of such course."

SEC. 6505. ENERGY EDUCATION AND TEACHER TRAINING.—Section 363 of the Energy Policy and Conservation Act (Public Law 94-163) is amended by adding the following new subsection:

"(f) **ENERGY EDUCATION GRANTS.**—(1) The Secretary shall provide competitive grants to supplement state program activities conducted pursuant to section 362(d)(4) to support projects designed to increase public awareness and understanding of energy issues, or to train educators to use existing energy related information for

teaching purposes. The Federal contribution toward such projects may not exceed 75 percent of their total cost.

"(2) There is authorized to be appropriated such sums as may be necessary to implement the provisions of this section."

SEC. 6506. TRIBAL GOVERNMENT ENERGY ASSISTANCE PROGRAM.—

(a) **FINANCIAL ASSISTANCE.**—The Secretary, pursuant to the Federal Nonnuclear Energy Research and Development Policy Act (Public Law 93-577), may grant financial assistance to tribal governments, or private sector persons working in cooperation with tribal governments, to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy projects on tribal lands. Such grants may include the costs of technical assistance in resource assessment, feasibility analysis, technology transfer, and the resolution of other technical, financial or management issues identified by the applicants for such grants.

(b) **CONDITIONS.**—Any applicant for financial assistance under this section must evidence coordination and cooperation with, and support from, local educational institutions and the affected local energy institutions.

(c) **CONSIDERATIONS.**—In determining the amount of financial assistance to be provided for a proposed project, the Secretary shall consider—

(1) the extent of involvement of local educational institutions and local energy institutions;

(2) the ease and costs of operation and maintenance of any project contemplated as a part of the project;

(3) whether the measure will contribute significantly to development or the quality of the environment of the affected tribal lands; and

(4) any other factors which the Secretary may determine to be relevant to a particular project.

(d) **COST-SHARE.**—The Secretary shall require at least 20 percent of the costs of any project under this section to be provided from non-Federal sources, unless the grant recipient is a for-profit private sector institution, in which case the Secretary shall require at least 50 percent of the costs of any project to be provided from non-Federal sources.

(e) **DEFINITION.**—For the purposes of this Section, the term "tribal government" shall include Native Alaskan governments.

SEC. 6507. STATE ENERGY CONSERVATION PLAN REQUIREMENT.—Section 362 (c)(5) of the Energy Policy and Conservation Act (Public Law 94-163) is amended by striking the semicolon and the word "and" and inserting in lieu thereof the following: "and to turn such vehicle left from a one-way street onto a one-way street at a red stop light after stopping; and".

Subtitle F—LIHEAP Options Pilot Program

SEC. 6601. SHORT TITLE.—This subtitle may be cited as the "Energy Options Study Act of 1991".

SEC. 6602. STUDY.—(a) **IN GENERAL.**—The Secretary, in consultation with the Secretary of Energy, shall conduct a study of the po-

tential use of LIHEAP funds to purchase futures or options contracts for fuel through registered commodities brokers.

(1) The study shall examine any potential advantages of the use of such funds including—

(A) protection for Federal, State and local government entities which provide low-income fuel assistance from unanticipated surges in the price of fuel for residential use;

(B) more efficient use of such funds; and

(C) more fuel assistance for low-income persons without an increase in Federal expenditures.

(2) The study shall examine any potential disadvantages of the use of such funds including reduction in funds available for fuel assistance, and waste, fraud, or abuse.

(3) The study shall further examine—

(A) the extent to which new authority would be needed for the use of such funds;

(B) the extent to which the use of such funds would conflict with existing law governing the Federal budget;

(C) the extent to which the use of futures and options on futures could provide effective protection for consumer cooperatives (or any organization whose purpose is to purchase fuel in bulk for residential use) from unanticipated surges in the price of fuel; and

(D) how government entities and consumer cooperatives or other organizations referred to in subparagraph (C) of this section could be educated in the prudent use of futures and options on futures to maximize their purchasing effectiveness and protect themselves against unanticipated surges in the price of fuel for residential use.

(b) **REPORT.**—The Secretary, no later than 12 months after the date of enactment of this Act, shall transmit the study required in this section to the Committee on Labor and Human Resources of the United States Senate, the Committee on Energy and Natural Resources of the United States Senate, and the United States House of Representatives.

SEC. 6603. AUTHORITY FOR PILOT PROGRAMS.—(a) **PILOT PROGRAM.**—The Secretary, in consultation with the Secretary of Energy, may conduct a pilot program in cooperation with one or more governmental or tribal recipients of funds in which the recipient uses futures and options on futures in its fuel assistance program with the advice of the Secretary.

(b) **EDUCATION.**—The Secretary, in consultation with the Secretary of Energy, may conduct a pilot program to educate governmental entities and consumer cooperatives or other organizations referred to in subparagraph (a)(3)(C) of section 6602 of this subtitle on the prudent and effective use of futures and options on futures to increase their protection against unanticipated surges in the price of fuel and thereby increase the efficiency of their fuel purchase or assistance programs.

(c) **AUTHORIZATION.**—There is authorized to be appropriated for fiscal years 1992, 1993, and 1994, such sums as may be necessary to carry out the purposes of this section.

SEC. 6604. DEFINITIONS.—For purposes of this subtitle the terms—(1) “Secretary” means the Secretary of Health and Human Services.

(2) “LIHEAP funds” means funds appropriated under the Low-Income Energy Assistance Act of 1981 (Public Law 97-35; 42 U.S.C. 8621 et. seq.).

TITLE VII—OIL AND GAS LEASING IN THE ARCTIC NATIONAL WILDLIFE REFUGE

Subtitle A—Statement of Purpose and Definitions

SEC. 7101. PURPOSE AND POLICY.—The Congress hereby declares that it is the purpose and policy of this title—

(a) to authorize competitive oil and gas leasing and development to proceed on the Coastal Plain in a manner consistent with protection of the environment, maintenance of fish and wildlife and their habitat, and the interests of the area's subsistence users; and

(b) to provide a new source of funding for energy related programs and projects designed to enhance the Nation's energy security and reduce dependence on imported oil.

SEC. 7102. DEFINITIONS.—When used in this title—

(a) the term “Coastal Plain” means that area identified as such in the map entitled “Arctic National Wildlife Refuge”, dated August 1980, as referenced in section 1002(b) of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3142(b)(1)) comprising approximately one million five hundred forty-nine thousand acres; and

(b) “Secretary” means the Secretary of the Interior or the Secretary's designee.

Subtitle B—Congressional Determination of Compatibility

SEC. 7201.—CONGRESSIONAL DETERMINATION.—Congress hereby determines that oil and gas activities authorized and conducted on the Coastal Plain pursuant to this title so as to result in no significant adverse effect on fish and wildlife, their habitat, and the environment, shall be deemed to be compatible with the major purposes for which the Arctic National Wildlife Refuge was established and no further findings or determinations of compatibility by the Secretary under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd(d)(1)(A)) are required to implement this Congressional determination.

Subtitle C—Coastal Plain Competitive Leasing Program

SEC. 7301. LEASING PROGRAM FOR LANDS WITHIN THE COASTAL PLAIN.—(a) The Congress hereby authorizes and directs the Secretary and other appropriate Federal officers and agencies to take such actions as are necessary to establish and implement a competitive oil and gas leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain. Activities pursuant to such program shall be undertaken:

(1) in accordance with the standards for protection of the environment as required by subtitle D of this title; and

(2) in a manner to ensure the receipt of fair market value by the public for the mineral resources to be leased.

(b) This title shall be the sole authority for leasing on the Coastal Plain.

(c) The Coastal Plain shall be considered "Federal land" for the purposes of the Federal Oil and Gas Royalty Management Act of 1982 (Public Law 97-451, as amended; 30 U.S.C. 170 et seq.).

SEC. 7302. RULES AND REGULATIONS.—(a) PROMULGATION.—The Secretary shall prescribe such rules and regulations as may be necessary to carry out the purposes and provisions of this title, including rules and regulations relating to protection of the environment of the Coastal Plain, as required by subtitle D of this title. Such rules and regulations shall be promulgated within nine months after the date of enactment of this title and shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this title and all operations on the Coastal Plain related to the exploration, development and production of oil and gas.

(b) CONSIDERATION OF VIEWS AND CONSULTATION.—In the formulation and promulgation of rules and regulations under this title, the Secretary shall request and give due consideration to the views of appropriate officials of the State of Alaska and the Government of Canada. The Secretary shall also consult with the Environmental Protection Agency and the Army Corps of Engineers in developing rules and regulations relating to the environment.

(c) REVISION OF REGULATIONS.—The Secretary shall periodically review and, if appropriate, revise the rules and regulations issued under subsection (a) of this section to reflect any significant biological, environmental, or engineering data which come to the Secretary's attention.

SEC. 7303. ADEQUACY OF THE DEPARTMENT OF THE INTERIOR'S LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT.—(a) IN GENERAL.—The "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain prepared pursuant to section 1002 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3142), and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), is hereby found by the Congress to be adequate to satisfy the legal requirements under the National Environmental Policy Act of 1969 with respect to actions authorized to be taken by the Secretary to develop and promulgate the regulations for the establishment of a leasing program authorized by this title prior to conducting the first lease sale.

(b) APPLICABILITY OF NEPA.—Except as provided in subsection (a) of this section, nothing in this title shall be considered or construed as otherwise limiting or affecting in any way the applicability of section 102(2)(C) of the National Environmental Policy Act of 1969 to all phases of oil and gas leasing, exploration, development and production and related activities conducted under or associated with the leasing program authorized by this title, nor shall anything in this title be considered or construed as in any way limiting or affecting the applicability of any other Federal or State law relating to the protection of the environment.

SEC. 7304. LEASE SALES.—(a) **ELIGIBILITY.**—Lands may be leased pursuant to the provisions of this title to any person qualified to obtain a lease for deposits of oil and gas under the Mineral Leasing Act, as amended (30 U.S.C. 181).

(b) **PROCEDURES.**—The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of sealed nominations for any area in the Coastal Plain for inclusion in, or exclusion from, a lease sale;

(2) public notice of and comment on designation of areas to be included in, or excluded from, a lease sale;

(3) review by the State of Alaska and local governments in Alaska which may be impacted by the proposed leasing; and

(4) periodic consultation with the State of Alaska and local governments in Alaska, oil and gas lessees, and representatives of other individuals or organizations engaged in activity in or on the Coastal Plain including those involved in subsistence uses and recreational activities.

(c) **LEASE SALES ON COASTAL PLAIN.**—The Secretary shall, by regulation, provide for lease sales of lands on the Coastal Plain. When lease sales are to be held, they shall occur after the nomination process provided for in subsection (b) of this section. For the first lease sale, the Secretary shall, consistent with the requirements set forth in subtitle D of this title, offer for lease those acres receiving the greatest number of nominations, but not to exceed a total of three hundred thousand acres. If the total acreage nominated is less than three hundred thousand acres, he shall include in such sale any other acreage which he believes has the highest resource potential, but in no event shall more than three hundred thousand acres of the Coastal Plain be offered in such sale. Thereafter, no more than three hundred thousand acres of the Coastal Plain may be leased in any one lease sale. The initial lease sale shall be held within eighteen months of the issuance of final regulations by the Secretary. The second lease sale shall be held thirty-six months after the initial sale, with additional sales conducted every twenty-four months thereafter so long as sufficient interest in development exists to warrant, in the Secretary's judgment, the conduct of such sales.

(d) **EXCLUSION OF ENVIRONMENTALLY SENSITIVE AREAS.**—Areas of the Coastal Plain deemed by the Secretary to be of particular environmental sensitivity may be excluded from leasing by the Secretary. The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives ninety days in advance of excluding any such areas from leasing. If the Secretary later determines that exploration, development, or production will result in no significant adverse effect on fish and wildlife, their habitat, and the environment, the Secretary shall, consistent with the provisions of subsection (c) of this section, offer such lands for leasing.

SEC. 7305. GRANT OF LEASES BY THE SECRETARY.—(a) **IN GENERAL.**—The Secretary is authorized to grant to the highest responsible qualified bidder by sealed competitive cash bonus bid any lands to be leased on the Coastal Plain upon payment by the lessee of such

bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which shall be not less than 12½ per centum in amount or value of the production removed or sold from the lease.

(b) **COMPLIANCE WITH PRIOR LEASE REQUIREMENTS.**—The Secretary shall not issue a lease or leases or approve the assignment or sublease of any lease or leases under the terms of this title to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, during any period in which, as determined by the Secretary, such entity has failed or refused to comply in any material respect with the reclamation requirements and other standards established for any prior oil and gas lease to which such requirements and standards applied under this or any other Federal law. Prior to making such determination with respect to any such entity the Secretary shall provide such entity with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the entity has complied with the reclamation requirement or other standard concerned, the Secretary may issue an oil and gas lease to the entity under this title.

(c) **ANTITRUST REVIEW.**—(1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

(2) The Attorney General may, in consultation with the Federal Trade Commission, conduct such antitrust review on the likely effects the issuance of such leases would have on competition as the Attorney General, after consultation with the Federal Trade Commission, deems appropriate and shall advise the Secretary with respect to such review. The Secretary shall provide such information as the Attorney General, after consultation with the Federal Trade Commission, may require in order to conduct any antitrust review pursuant to this paragraph and to make recommendations pursuant to paragraph (3) of this subsection.

(3) The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary, including the nonacceptance of any bid or the imposition of terms or conditions on any lease, as may be appropriate to prevent any situation inconsistent with the antitrust laws. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease would create or maintain a situation inconsistent with the antitrust laws, the Secretary may—

(A) refuse to accept an otherwise qualified bid for such lease, or refuse to issue such lease, notwithstanding subsection (a) of this section; or

(B) modify or impose terms or conditions on the lease, consistent with advice provided by the Attorney General.

(4) The Secretary may issue a lease notwithstanding adverse advice from the Attorney General, or refuse to impose recommended terms or conditions, if the Secretary makes specific findings that approval of the lease is necessary to carry out the purposes of this title, that approval is consistent with the public interest, and that there are no reasonably available alternatives that would have significantly less anticompetitive effects. In such event, the Secretary must notify the lessee and the Attorney General of such findings.

(5) Nothing in this subsection shall restrict the authority of the Attorney General, the Federal Trade Commission, or any other Federal department or agency to secure information, conduct reviews, make recommendations, or seek appropriate relief.

(d) SECRETARY'S APPROVAL FOR SALE, EXCHANGE, ASSIGNMENT, OR OTHER TRANSFER OF LEASES.—No lease issued under this title may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with, and give due consideration to the views of, the Attorney General.

(e) NO ANTITRUST IMMUNITY OR DEFENSES.—Nothing in this title shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(f) DEFINITIONS.—As used in this section, the term—

(1) "antitrust review" shall be deemed an "antitrust investigation" for the purposes of the Antitrust Civil Process Act (15 U.S.C. 1311); and

(2) "antitrust laws" means those Acts set forth in section 1 of the Clayton Act, 15 U.S.C. 12, as amended.

SEC. 7306. LEASE TERMS AND CONDITIONS.—An oil and gas lease issued pursuant to this title shall—

(a) be for a tract consisting of a compact area not to exceed two thousand five hundred sixty acres, or four surveyed or protracted sections, whichever is larger, which shall be as compact in form as possible: *Provided*, That the Secretary is authorized to lease on a case-by-case basis units of up to three thousand eight hundred forty acres when necessary to consolidate partial tracts adjacent to the external boundaries of the Coastal Plain;

(b) be for an initial period of ten years and shall be extended for so long thereafter as oil or gas is produced in paying quantities from the lease or unit area to which the lease is committed or for so long as drilling or reworking operations, as approved by the Secretary, are conducted on the lease or unit area;

(c) require the payment of royalty as provided for in section 7305 of this title;

(d) require approval of an exploration plan, as provided for in section 7307 of this title;

(e) require approval of a development and production plan, as required in section 7307 of this title;

(f) require posting of bond required by section 7308 of this title;

(g) provide for the suspension of the lease during the initial lease term or thereafter pursuant to section 7309 of this title;

(h) provide for the cancellation of the lease during the initial lease term or thereafter pursuant to section 7310 of this title;

(i) contain the terms and conditions relating to protection of fish and wildlife, their habitat, and the environment, as required by subtitle D of this title;

(j) forbid the flaring of natural gas from any well unless the Secretary finds that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or work-over operations;

(k) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

(l) contain such other provisions as the Secretary determines necessary to ensure compliance with the provisions of this title and the regulations issued thereunder.

SEC. 7307. EXPLORATION AND DEVELOPMENT AND PRODUCTION PLANS.—(a) **EXPLORATION PLANS.**—All exploration activities pursuant to any lease issued or maintained under this title shall be conducted in accordance with an approved exploration plan or an approved revision of such plan. Prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this title, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any region of the Coastal Plain, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if the Secretary finds that such plan is consistent with the provisions of this title and other applicable law.

(b) **OIL AND GAS DEVELOPMENT AND PRODUCTION PLANS.**—All development and production pursuant to a lease issued or maintained pursuant to this title shall be conducted in accordance with an approved development and production plan. Prior to commencing development or production pursuant to any oil and gas lease issued or maintained under this title, the holder thereof shall submit a development and production plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any region of the Coastal Plain, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if the Secretary finds that such plan is consistent with the provisions of this title and other applicable law.

(c) **REQUIREMENTS APPLICABLE TO EXPLORATION PLANS AND DEVELOPMENT AND PRODUCTION PLANS.**—Exploration plans and development and production plans shall include where applicable—

(1) the names and legal addresses of the following persons: the operator, contractors, subcontractors and the owners or lessees other than the operator;

(2) a map or maps showing: (A) the location of a point of reference selected by the operator within the area covered by the plan of operations showing, in relation to that point, existing and proposed access routes or roads within the area, the boundaries of proposed surface disturbance and location of all survey lines; (B) the location of proposed drilling sites, wellsite layout, and all surface facilities; (C) sources of construction materials within the area including but not limited to gravel; and (D) the location of ancillary facilities including but not limited

to camps, sanitary facilities, water supply, disposal facilities, pipelines, fuel storage facilities, storage facilities, base of operations, and airstrips. A point of reference selected by the operator within the area of operations shall be marked with a ground monument;

(3) a description of: (A) all surface and ancillary facilities, including but not limited to camps, sanitary facilities, water supply, disposal facilities, pipelines, fuel storage facilities, storage facilities, base of operations, and airstrips; and (B) the major equipment to be used in the operations, including but not limited to equipment and methods for the transport of all waters used in or produced by operations, and of the proposed method of transporting such equipment within the area covered by the plan of operations including to and from the site;

(4) an estimated schedule for any phase of operations of which review by the Secretary is sought and the anticipated date of operation completion;

(5) the nature and extent of proposed operations;

(6) plans for reclamation, including—

(A) the anticipated reclamation work to be performed;

(B) a proposed schedule of reclamation activities to be performed; and

(C) a detailed estimate of reclamation costs;

(7) methods for disposal of all wastes and hazardous and toxic substances;

(8) an affidavit stating that the operations planned will be in compliance with all applicable Federal, State, and local laws and regulations;

(9) contingency plans in case of spills, leaks, or other accidents; and

(10) such additional information as may be required by the Secretary to ensure that the proposed activities are consistent with this title, as well as other applicable Federal and State environmental laws.

(d) **PROCEDURES FOR PLAN APPROVAL.**—(1) After an exploration or development and production plan is submitted for approval, the Secretary shall promptly publish notice of the submission and availability of the text of the proposed plan in the **FEDERAL REGISTER** and a newspaper of general circulation in the State of Alaska and provide an opportunity for written public comment.

(2) Within one hundred twenty days after receiving an exploration or development and production plan, the Secretary shall determine, after taking into account any comment received under paragraph (1) of this subsection, whether the activities proposed in the plan are consistent with this title and other applicable provisions of Federal and State law. If that determination is in the affirmative, the Secretary shall return the plan along with a statement of any modifications necessary for its approval. The Secretary, as a condition of approving any plan under this section—

(A) may require modifications to the plan that the Secretary considers necessary or appropriate to make it consistent with this title and other applicable law. The Secretary shall assess reasonable fees or charges for the reimbursement of all necessary and reasonable research, administrative, monitoring, en-

forcement, and reporting costs associated with reviewing the plan and monitoring its implementation; and

(B) shall require such periodic reports regarding the carrying out of the drilling and related activities as may be necessary or appropriate for purposes of determining the extent to which the plan is being complied with and the effectiveness of the plan in ensuring that the drilling and related activities are consistent with this title and other applicable provisions of Federal and State law.

(e) **MODIFICATION OF PLANS.**—If at any time while activities are being carried out under a plan approved under this section, the Secretary, on the basis of available information, determines that the continuation of any particular activity under the plan is likely to result in a significant adverse effect on fish or wildlife, their habitat, or the environment, the Secretary, after consultation with the lessee shall—

(1) make modifications to part or all of the plan as necessary or appropriate to avoid the significant adverse effect;

(2) temporarily suspend part or all of the drilling or related activity under the plan for such time as the Secretary considers necessary or appropriate to avoid such significant adverse effect; or

(3) terminate and cancel the plan where actions under paragraph (1) or (2) will not avoid the significant adverse effect.

SEC. 7308. BONDING REQUIREMENTS.—(a) **REQUIREMENT FOR BOND, SURETY, OR OTHER FINANCIAL ARRANGEMENT.**—The Secretary shall, by rule or regulation, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease. Such bond, surety, or financial arrangement is in addition to and not in lieu of any bond, surety, or financial arrangement required by any other regulatory authority or required by any other provision of law.

(b) **AMOUNT OF BOND, SURETY, OR OTHER FINANCIAL ARRANGEMENT.**—The bond, surety, or financial arrangement shall be in an amount—

(1) to be determined by the Secretary to provide for reclamation of the lease site in accordance with an approved or revised exploration or development and production plan; plus

(2) an amount set by the Secretary consistent with the type of operations proposed, to provide the means for rapid and effective cleanup, and to minimize damages resulting from an oil spill, the escape of gas, refuse, domestic wastewater, hazardous or toxic substances, or fire caused by oil and gas activities.

(c) **ADJUSTMENT OF BOND TO CONFORM TO REVISED PLAN.**—In the event that an approved exploration or development and production plan is revised, the Secretary may adjust the amount of the bond, surety, or other financial arrangement to conform to such modified plan.

(d) **DURATION OF BOND, SURETY, OR OTHER FINANCIAL ARRANGEMENT.**—The responsibility and liability of the lessee and its surety under the bond, surety, or other financial arrangement shall continue until such time as the Secretary determines that there has been compliance with the terms and conditions of the lease and all applicable law.

(e) **TERMINATION OF LIABILITY.**—Within sixty days after determining that there has been compliance with the terms and conditions of the lease and all applicable laws, the Secretary, after consultation with affected Federal and State agencies, shall notify the lessee that the period of liability under the bond, surety, or other financial arrangement has been terminated.

SEC. 7309. LEASE SUSPENSION.—The Secretary may direct or assent to the suspension of operations and production under any lease granted under the terms of this title: (1) in the interest of conservation of the resource; (2) where there is no available system to transport the resource; or (3) where there is a threat of a significant adverse effect upon fish or wildlife, their habitat or the environment. If such a suspension is directed or assented to by the Secretary, any payment of rental prescribed by such lease shall be suspended during such period of suspension of operations and production, and the term of the lease shall be extended by adding any such suspension period thereto.

SEC. 7310. LEASE CANCELLATION.—(a) **CANCELLATION OF NONPRODUCING LEASE.**—Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this title, or of any applicable provision of Federal or State environmental law, or of the lease, or of any regulation issued under this title, such lease may be canceled by the Secretary if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at the lease owner's record post office address.

(b) **CANCELLATION OF PRODUCING LEASE.**—Whenever the owner of any producing lease fails to comply with any of the provisions of this title, or of any applicable provision of Federal or State environmental law, or of the lease, or of any regulation issued under this title, such lease may be forfeited and canceled by any appropriate proceeding brought by the Secretary in any United States district court having jurisdiction under the provisions of this title.

(c) **ADDITIONAL PROVISIONS.**—(1) In addition to the authority for lease cancellation provided for by subsections (a) and (b) of this section, any lease may be canceled at any time, if the Secretary determines, after a hearing, that—

(A) continued activity pursuant to such lease is likely to result in a significant adverse effect to fish or wildlife, their habitat, or the environment, or is likely to result in serious harm or damage to human life, to property, or to the national security or defense; and

(B) the likelihood of a significant adverse effect will not disappear within a reasonable period of time or the threat of harm or damage will not disappear or decrease to any acceptable extent within a reasonable period of time.

(2) Such cancellation shall not occur unless and until operations under such lease or permit shall have been under suspension, or temporary prohibition, by the Secretary, with due extension of any

lease term continuously for a period of five years, or for a lesser period upon request of the lessee.

(3) Cancellation under this subsection shall entitle the lessee to receive such compensation as the lessee demonstrates to the Secretary to be equal to the lesser of (A) the fair market value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including the costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oil spill or spill of other hazardous or toxic materials, fines, damages, penalties, or removal costs assessed pursuant to section 7315 of this title or other State or Federal environmental laws, any fees paid pursuant to section 7503 of this title, and all other costs reasonably anticipated on the lease; or (B) the excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to the date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee (exclusive of any fines, damages, penalties, or removal costs assessed pursuant to section 7315 of this title or other State or Federal environmental laws, and any fees paid pursuant to section 7503 of this title) after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement).

(d) EFFECT OF CANCELLATION ON RECLAMATION OBLIGATIONS.—Cancellation of a lease under this section shall in no way release the owner of the lease from the obligation to provide for reclamation of the lease site.

SEC. 7311. ASSIGNMENT OR SUBLETTING OF LEASES.—No lease issued under the authority of this title shall be assigned or sublet, except with the consent of the Secretary.

SEC. 7312. RELINQUISHMENT.—The lessee may, at the discretion of the Secretary, be permitted at any time to make written relinquishment of all rights under any lease issued pursuant to this title. The Secretary shall accept the relinquishment by the lessee of any lease issued under this title where there has not been surface disturbance on the lands covered by the lease.

SEC. 7313. UNITIZATION.—For the purpose of conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof and in order to avoid the unnecessary duplication of facilities, to protect the environment of the Coastal Plain, and to protect correlative rights, the Secretary shall require to the greatest extent practicable, that lessees unite with each other in collectively adopting and operating under a cooperative or unit plan of development for operation of such pool, field, or like area, or any part thereof. The Secretary is also authorized and directed to enter into such agreements as are necessary or appropriate for the protection of the United States against drainage.

SEC. 7314. OIL AND GAS INFORMATION.—(a) IN GENERAL.—(1) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this title shall provide the Secretary access to all data and information (including processed, analyzed, and interpreted information) obtained from such activity and shall provide copies of such data and information as the Secre-

tary may request. Such data and information shall be provided in accordance with regulations which the Secretary shall prescribe.

(2) If interpreted information provided pursuant to paragraph (1) of this subsection is provided in good faith by the lessee or permittee, such lessee or permittee shall not be responsible for any consequence of the use or of reliance upon such interpreted information.

(3) Whenever any data or information is provided to the Secretary, pursuant to paragraph (1) of this subsection—

(A) by a lessee or permittee, in the form and manner of processing which is utilized by such lessee or permittee in the normal conduct of business, the Secretary shall pay the reasonable cost of reproducing such data and information;

(B) by a lessee or permittee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay the reasonable cost of processing and reproducing such data and information.

(b) **REGULATIONS.**—The Secretary shall prescribe regulations to: (1) assure that the confidentiality of privileged or proprietary information received by the Secretary under this section will be maintained; and (2) set forth the time periods and conditions which shall be applicable to the release of such information.

SEC. 7315. REMEDIES AND PENALTIES.—(a) **IN GENERAL.**—Except as provided in section 7316 of this title, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with, any lease issued under this title. Proceedings may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district in which the Coastal Plain is located.

(b) **ACTIONS FOR RELIEF.**—At the request of the Secretary, the Attorney General or a United States Attorney shall institute a civil action in the district court of the United States for the district in which any defendant resides or may be found, or in the judicial district in which the Coastal Plain is located, for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this title, any regulation or order issued under this title, or any term of a lease issued pursuant to this title.

(c) **CIVIL PENALTIES.**—If any person fails to comply with any provision of this title, or any term of a lease issued pursuant to this title, or any regulation or order issued under this title, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$10,000 for each day of the continuance of such failure. The Secretary may assess, collect and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing.

(d) **CRIMINAL PENALTIES.**—Any person who knowingly and willfully: (1) violates any provision of this title, any term of a lease issued pursuant to this title, or any regulation or order issued under the authority of this title designed to protect health, safety, or the environment or conserve natural resources; (2) makes any false statement, representation, or certification in any application, record, report or other document filed or required to be maintained under this title; (3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be main-

tained under this title; or (4) reveals any data or information required to be kept confidential by this title, shall, upon conviction, be punished by a fine pursuant to Title 18 of the United States Code, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (3) of this subsection, shall constitute a separate violation.

(e) **LIABILITY OF CORPORATE OFFICERS AND AGENTS FOR VIOLATIONS BY CORPORATION.**—Whenever a corporation or other entity is subject to prosecution under subsection (d) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (d) of this section.

(f) **CONCURRENT AND CUMULATIVE NATURE OF PENALTIES.**—The remedies and penalties prescribed in this title shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this title shall be in addition to any other remedies and penalties afforded by any other law or regulation.

(g) **REMOVAL COSTS AND LIABILITY FOR DAMAGES.**—Notwithstanding any other provision of law, if any discharge or substantial threat of discharge of oil, hazardous or toxic substances, or any other pollutant has occurred in any area of the Coastal Plain or adjacent waters, each responsible party shall be jointly, severally, and strictly liable for the removal costs and damages specified in this subsection that result from such incident. The Secretary shall make a determination with respect to such liability after notice to the responsible party and an opportunity for hearing. Upon failure of the responsible party adequately to control and remove the discharge or threat, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with the responsible party, or both, shall have the right to accomplish the control and removal at the expense of the responsible party. Funds contained in the Coastal Plain Liability and Reclamation Fund, provided for by section 7503 of this title, may be used to accomplish such control and removal until such time as sufficient funds can be recovered from the responsible party. The removal costs and damages referred to in this subsection are the following—

(1) all necessary removal costs as determined by the Secretary;

(2) damages for injury to, destruction of, loss of, and reclamation of natural resources, including the reasonable costs of assessing such injury, destruction, loss or reclamation; and

(3) damages for economic loss resulting from injury to, or destruction of, real or personal property or natural resources, and loss of subsistence use of natural resources by local residents. Nothing in this section shall affect or limit the applicability of any other provision of law relating to the discharge of oil, hazardous or toxic substances, or any other pollutant.

SEC. 7316. EXPEDITED JUDICIAL REVIEW.—Any complaint filed seeking judicial review of an action of the Secretary in promulgating any regulation under this title may be filed only in the United

States Court of Appeals for the District of Columbia, and such complaint shall be filed within ninety days from the date of such promulgation, or after such date if such complaint is based solely on grounds arising after such ninetieth day, in which case the complaint must be filed within ninety days after the complainant knew or reasonably should have known of the grounds for the complaint. Any complaint seeking judicial review of any other actions of the Secretary under this title may be filed in any appropriate district court of the United States, and such complaint must be filed within ninety days from the date of the action being challenged, or after such date if such complaint is based solely on grounds arising after such ninetieth day, in which case the complaint must be filed within ninety days after the complainant knew or reasonably should have known of the grounds for the complaint. Action of the Secretary with respect to which review could have been obtained under this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

SEC. 7317. ANNUAL REPORT TO CONGRESS.—On March 1st of each year following the date of enactment of this title, the Secretary shall prepare and submit to the Congress an annual report on the leasing program authorized by this title.

SEC. 7318. INTERESTS OF THE INUPIAT ESKIMO PEOPLE.—(a) OUTSIDE OF THE COASTAL PLAIN.—The prohibitions and limitations contained in section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) insofar as they have application to lands or interests therein owned by the Inupiat Eskimo people within the Arctic National Wildlife Refuge, but outside the Coastal Plain, are hereby repealed.

(b) WITHIN THE COASTAL PLAIN.—The prohibitions and limitations contained in section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) insofar as they have application to lands or interests therein owned by the Inupiat Eskimo people within the Coastal Plain are hereby repealed as of the day after the first lease sale is held pursuant to this title. With respect to the lands and interests therein described in this subsection, no exploratory drilling activities shall be authorized until the day after such lease sale.

(c) APPLICABILITY OF ENVIRONMENTAL REGULATIONS.—The substantive provisions of the final regulations issued pursuant to this title which establish environmental stipulations, terms and conditions for oil and gas leasing on the Coastal Plain shall apply to the exploration and development of all subsurface property interests owned by the Inupiat Eskimo people within the Arctic National Wildlife Refuge: *Provided*, That prior to issuance of such regulations, oil and gas exploration and development activities on the land and interests therein described in subsection (a), shall be governed by the stipulations set forth in Appendix 2 of the August 9, 1983 agreement between the Arctic Slope Regional Corporation and the United States.

(d) LITIGATION OF CLAIMS.—Any claims for money damages or other available relief brought by Arctic Slope Regional Corporation or Kaktovik Inupiat Corporation alleging that the provisions of this title constitute a taking of contract or property rights under the Fifth Amendment to the Constitution of the United States may be

brought within one hundred and twenty days of its enactment. A claim shall be barred unless a complaint is filed within the time specified. Any such complaint shall be filed in a United States district court, and such court shall have exclusive jurisdiction to determine such proceedings in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any claim whether in a proceeding instituted prior to or on or after the date of enactment of this title. Any such proceeding shall be assigned for hearing at the earliest possible date, shall take precedence over all other matters pending on the docket of the district court at that time, and shall be expedited in every way by such court. Any review of an interlocutory or final judgment, decree, or order of such district court may be had only upon direct appeal to the Supreme Court of the United States.

Subtitle D—Coastal Plain Environment Protection

SEC. 7401. NO SIGNIFICANT ADVERSE EFFECT STANDARD TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES.—(a) IN GENERAL.—The Secretary shall administer the provisions of this title through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other provisions that ensure the oil and gas exploration, development, and production activities on the Coastal Plain will result in no significant adverse effect on fish and wildlife, their habitat, and the environment, and that shall require the application of the best commercially available technology for oil and gas exploration, development, and production, on all new exploration, development, and production operations, and whenever practicable, on existing operations.

(b) SITE-SPECIFIC ASSESSMENT AND MITIGATION.—The Secretary shall also require, with respect to any proposed drilling and related activities, that—

(1) a site-specific analysis be made of the probable effects, if any, that the drilling or related activities will have on fish and wildlife, their habitat, and the environment;

(2) a mitigation plan be implemented to avoid, minimize and compensate (in that order and to the extent practicable) any significant adverse effect assessed under paragraph (1) of this subsection; and

(3) the development of the mitigation plan shall occur after consultation with the agency or agencies having jurisdiction over matters mitigated by the plan.

SEC. 7402. REGULATIONS TO PROTECT THE COASTAL PLAIN'S FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS, AND THE ENVIRONMENT.—(a) IN GENERAL.—Prior to implementing the leasing program authorized by subtitle C of this title, the Secretary shall prepare and promulgate regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other measures designed to ensure that the activities undertaken in the Coastal Plain authorized by this title are conducted in a manner consistent with the purposes and environmental requirements of this title.

(b) **COMPLIANCE WITH FEDERAL AND STATE ENVIRONMENTAL LAWS AND OTHER REQUIREMENTS.**—The proposed regulations, lease terms, conditions, restrictions, prohibitions, and stipulations for the leasing program authorized by subtitle C of this title shall require compliance with all applicable provisions of Federal and State environmental law and shall also require—

(1) as a minimum, the safety and environmental mitigation measures set forth in items one through twenty-nine (1 through 29) at pages 167 through 169 of the "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain;

(2) seasonal limitations on exploration, development and related activities, where necessary, to avoid significant adverse effects during periods of concentrated fish and wildlife breeding, denning, nesting, spawning and migration;

(3) that exploration activities, except for surface geological studies, be limited to the period between approximately November 1 and May 1 and that exploration activities will be supported by ice roads, winter trails with adequate snow cover, ice pads, ice airstrips, and air transport methods: *Provided*, That such exploration activities may be permitted at other times if the Secretary determines, after affording an opportunity for public comment and review, that special circumstances exist necessitating that exploration activities be conducted at other times of the year and he finds that such exploration will have no significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain;

(4) design safety and construction standards for all pipelines and any access and service roads that—

(A) minimize, to the maximum extent possible, adverse effects upon the passage of migratory species such as caribou; and

(B) minimize adverse effects upon the flow of surface water by requiring the use of culverts, bridges and other structural devices;

(5) prohibitions on public access and use on all pipeline access and service roads;

(6) stringent reclamation and rehabilitation requirements, consistent with the standards set forth in this title, requiring the removal from the Coastal Plain of all oil and gas development and production facilities, structures and equipment upon completion of oil and gas production operations: *Provided*, That the Secretary may exempt from the requirements of this paragraph those facilities, structures or equipment which the Secretary determines would assist in the management of the Arctic National Wildlife Refuge and which are donated to the United States for that purpose;

(7) appropriate prohibitions or restrictions on access by all modes of transportation;

(8) appropriate prohibitions or restrictions on sand and gravel extraction;

(9) consolidation of facility siting;

(10) appropriate prohibitions or restrictions on use of explosives;

(11) avoidance, to the extent practicable, of springs, streams and river system; the protection of natural surface drainage patterns, wetlands, and riparian habitats; and the regulation of methods or techniques for developing or transporting adequate supplies of water for exploratory drilling;

(12) avoidance or reduction of air traffic-related disturbance to fish and wildlife;

(13) treatment and disposal of hazardous and toxic wastes, solid wastes, reserve pit fluids, drilling muds and cuttings, and domestic wastewater, in accordance with applicable Federal and State environmental law;

(14) fuel storage and oil spill contingency planning;

(15) research, monitoring and reporting requirements;

(16) field crew environmental briefings;

(17) avoidance of significant adverse effects upon subsistence hunting, fishing, and trapping by subsistence users;

(18) compliance with applicable air and water quality standards;

(19) appropriate seasonal and safety zone designations around well sites within which subsistence hunting and trapping would be limited;

(20) reasonable stipulations for protection of cultural and archaeological resources; and

(21) all other protective environmental stipulations, restrictions, terms, and conditions deemed necessary by the Secretary.

(c) **CONSIDERATIONS.**—In preparing and promulgating regulations, lease terms, conditions, restrictions, prohibitions, and stipulations under this section, the Secretary shall consider—

(1) the environmental protection standards which governed the initial Coastal Plain seismic exploration program (50 C.F.R. 37.31-33);

(2) the land use stipulations for exploratory drilling on the KIC-ASRC private lands which are set forth in Appendix 2 of the August 9, 1983, agreement between Arctic Slope Regional Corporation and the United States; and

(3) the operational stipulations for Koniag ANWR Interest lands contained in the draft Agreement between Koniag, Inc. and the United States of America on file with the Secretary on December 1, 1987.

SEC. 7403. SADLEROCHIT SPRING SPECIAL AREA.—(a) **DESIGNATION AS SPECIAL AREA.**—(1) The Sadlerochit Spring area, comprising approximately four thousand acres as depicted on the map referenced in section 7102 of this title, is hereby designated to be a Special Area. Such Special Area shall be managed so as to protect and preserve the area's unique and diverse character including its fish, wildlife, and subsistence resource values.

(2) Pursuant to subsection (d) of section 7304 of this title, the Secretary may exclude the Sadlerochit Spring Special Area from leasing.

(3) In the event that the Secretary leases the Sadlerochit Spring Special Area, or any part thereof, for purposes of oil and gas exploration, development, production, and related activities, there shall be no surface occupancy of the lands comprising the Special Area.

(b) **DESIGNATION OF OTHER AREAS.**—The Secretary is authorized to designate other areas of the Coastal Plain as Special Areas if the Secretary determines that they are of unique character and interest so as to require such special protection. The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives of the Secretary's intent to designate such areas ninety days in advance of making such designations. Any such areas designated as Special Areas shall be managed in accordance with the standards set forth in subsection (a) of this section.

SEC. 7404. FACILITY CONSOLIDATION PLANNING.—(a) **IN GENERAL.**—The Secretary shall, after providing for public notice and comment, prepare and update periodically a plan to govern, guide, and direct the siting and construction of facilities for the exploration, development, production, and transportation of Coastal Plain oil and gas resources. This plan shall have the following objectives:

- (1) avoiding unnecessary duplication of facilities and activities;
- (2) encouraging consolidation of common facilities and activities;
- (3) locating or confining facilities and activities to areas which will minimize impact on fish and wildlife, their habitat, and the environment;
- (4) utilizing existing facilities wherever practicable; and
- (5) enhancing compatibility between wildlife values and development activities.

(b) **SUPPLEMENT TO ANILCA CONSERVATION PLANS.**—The plan prepared under this section shall supplement any comprehensive conservation plan prepared pursuant to the requirements of section 304(g) of the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2394).

SEC. 7405. RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN.—Notwithstanding Title XI of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3161 et seq.), the Secretary is authorized to grant under section 28 of the Mineral Leasing Act (30 U.S.C. 185) rights-of-way and easements across the Coastal Plain for the transportation of oil and gas under such terms and conditions as may be necessary so as not to result in a significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain. Such terms and conditions shall include requirements that facilities be sited or modified so as to avoid unnecessary duplication of roads and pipelines. The regulations issued pursuant to this title shall include provisions regarding the granting of rights-of-way across the Coastal Plain.

SEC. 7406. ENVIRONMENTAL STUDIES.—In addition to any other environmental studies required by law, subsequent to exploring or developing of any area or region of the Coastal Plain, the Secretary shall conduct such additional studies to establish environmental information as he deems necessary, and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide information which can be used for comparison with any previously-collected data for the purpose of identifying any effects on fish or wildlife and their habitat and any

significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such effects or changes.

SEC. 7407. ENFORCEMENT OF SAFETY AND ENVIRONMENTAL REGULATIONS.—(a) RESPONSIBILITY OF THE SECRETARY.—The Secretary shall diligently enforce all regulations, lease terms, conditions, restrictions, prohibitions, and stipulations promulgated pursuant to this title.

(b) RESPONSIBILITIES OF HOLDERS OF LEASE.—It shall be the responsibility of any holder of a lease under this title to—

(1) maintain all operations within such lease area in compliance with regulations intended to protect persons and property on, and fish and wildlife, their habitat, and the environment of, the Coastal Plain; and

(2) allow prompt access at the site of any operations subject to regulation under this title to any appropriate Federal or State inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

(c) ON-SITE INSPECTION OF FACILITIES.—The Secretary shall promulgate regulations to provide for—

(1) scheduled onsite inspection by the Secretary, at least twice a year, of each facility on the Coastal Plain which is subject to any environmental or safety regulation promulgated pursuant to this title or such provisions contained in any lease issued pursuant to this title to assure compliance with such environmental or safety regulations; and

(2) periodic onsite inspection by the Secretary at least once a year without advance notice to the operator of such facility to assure compliance with all environmental or safety regulations.

SEC. 7408. FUNDING FOR ENVIRONMENTAL MONITORING AND ENFORCEMENT.—Beginning with the first full fiscal year following the first lease sale pursuant to section 7304 of this title, and continuing annually thereafter until the tenth full fiscal year after oil and gas exploration, production and development activities on the Coastal Plain have ceased, there is hereby authorized to be appropriated to the Administrator of the Environmental Protection Agency (Administrator) the sum of \$5,000,000. The Administrator shall distribute annually to the State of Alaska not less than 25 percent of such amount. These moneys shall be used for activities, or in support of activities, within the State of Alaska by the Environmental Protection Agency and the State of Alaska for monitoring compliance with, and enforcing, all Federal environmental laws within their jurisdiction applicable to oil and gas exploration, development and production under this title, and monitoring compliance with, and enforcing, all such laws, with respect to owners, operators, and other persons having business in connection with leases granted pursuant to this title. For purposes of this section, all such Federal environmental laws shall include, but are not limited to, the Clean Air Act (42 U.S.C. 7401-7642), the Solid Waste Disposal Act (42 U.S.C. 6901-6987); the Federal Water Pollution Control Act (33 U.S.C. 1251-1376); the Comprehensive Environmental Response,

Compensation, and Liability Act (26 U.S.C. 4611 et seq. and 42 U.S.C. 9601-9675); and the Safe Drinking Water Act (42 U.S.C. 300f-300j-9). The Administrator and the State of Alaska shall enter into a cooperative agreement to coordinate their responsibilities under this section. The Administrator shall consult with the U.S. Department of Transportation and the State of Alaska on the appropriate role of the State of Alaska in monitoring and enforcing the Hazardous Materials Transportation Act (49 App. U.S.C. 1801-1814). The Administrator shall submit annually a report to the Congress on the amount of funds expended and activities carried out pursuant to this section.

Subtitle E—Land Reclamation and Reclamation Liability Fund

SEC. 7501. LAND RECLAMATION.—The holder of a lease or leases on lands within the Coastal Plain shall be fully responsible and liable for the reclamation of lands within the Coastal Plain and any other Federal lands adversely affected in connection with exploration, development, or transportation activities on a lease within the Coastal Plain. The holder of a lease shall also be responsible for conducting any land reclamation required as a result of activities conducted on the lease by any of the leaseholder's subcontractors or agents. The holder of a lease may not delegate or convey, by contract or otherwise, this responsibility and liability to another party without the express written approval of the Secretary.

SEC. 7502. STANDARD TO GOVERN LAND RECLAMATION.—The standard to govern the reclamation of lands required to be reclaimed under this title, following their temporary disturbance or upon the conclusion of their use or prolonged commercial production of oil and gas and related activities, shall be reclamation and restoration to a condition capable of supporting the uses which the lands were capable of supporting prior to any exploration, development, or production activities, or upon application by the lessee, to a higher or better use as approved by the Secretary; except that in the case of roads, drill pads and other gravel-foundation structures, reclamation and restoration shall be to a condition as closely approximating the original condition of such lands as is feasible using the best commercially available technology. Reclamation of lands shall be conducted in a manner that will not itself impair or cause significant adverse effects on fish or wildlife, their habitat, or the environment.

SEC. 7503. COASTAL PLAIN LIABILITY AND RECLAMATION FUND.—(a) ESTABLISHMENT.—Within six months of a commercial discovery within the Coastal Plain, the Coastal Plain Liability and Reclamation Fund (the "Reclamation Fund") is hereby directed to be established by the Secretary.

(b) COLLECTION OF FEES.—The Secretary shall collect from the operator a fee of 5 cents per barrel on commercially produced crude oil or natural gas liquids from the Coastal Plain at the time and point where such crude oil or natural gas liquids first leave the Coastal Plain. The collection of the fee shall cease when \$50,000,000 has been accumulated in the Reclamation Fund, and it

shall be resumed at any time that the accumulation of revenue in the Reclamation Fund falls below \$45,000,000.

(c) **INVESTMENT OF FUND MONEYS.**—All revenues collected under subsection (b) shall be paid into the Reclamation Fund. The reasonable costs of administration of the Reclamation Fund shall be paid from the revenues in the Reclamation Fund. All sums not needed for administration of the Reclamation Fund or making authorized payments out of the Reclamation Fund shall be invested by the Secretary of the Treasury, at the request of the Secretary, in public debt securities with maturities suitable to the needs of the Reclamation Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. Income from such securities shall be added to the principal of the Reclamation Fund.

(d) **USE OF FUND MONEYS.**—The revenues in the Reclamation Fund shall be available, to the extent provided in annual appropriations acts and with the approval of the Secretary, for the following purposes:

(1) to compensate promptly any person or entity, public or private, for any damages caused by oil and gas exploration, development and production activities on or in the vicinity of the Coastal Plain;

(2) to reclaim any area of the Coastal Plain not reclaimed in accordance with the standard set forth in section 7502 of this title, by the operator or the holder of a lease or leases;

(3) up to \$15,000,000 annually to reclaim and restore:

(A) any area of the Arctic National Wildlife Refuge or other North Slope Federal lands affected by past and future oil and gas exploration, development, or production; and

(B) North Slope non-Federal lands affected by future exploration, development, or production on the Coastal Plain, which are not reclaimed and restored in accordance with applicable Federal and State law;

(4) up to \$2,000,000 annually to the Director of the Fish and Wildlife Service to monitor and conduct research on fish and wildlife species which utilize the land and water resources of the Coastal Plain; and

(5) to reclaim at the conclusion of the period of exploration, development and production, any area of the Coastal Plain and related lands which have not been properly reclaimed by the operator or lease holder.

(e) **RECOVERY OF FUNDS.**—The United States shall have legal recourse against any party or entity who is responsible for the reclamation of any area within the Coastal Plain, to recover any funds expended under paragraphs (1), (2), (3) and (5) of this subsection due to a failure by the responsible party to reclaim such area as required by this title: *Provided*, That such right of recovery shall not be available against any Alaska Natives conducting traditional subsistence use activities. Any funds so recovered shall be deposited in the Reclamation Fund.

(f) **TERMINATION OF FUND.**—Any moneys remaining in the Reclamation Fund fifty years after the period of active oil and gas exploration, development, production and reclamation has been concluded in the Coastal Plain shall be paid into the general fund of the United States Treasury.

Subtitle F—Disposition of Oil and Gas Revenues

SEC. 7601. DISTRIBUTION OF REVENUES.—Notwithstanding any other provision of law, all revenues received from competitive bids, sales, bonuses, royalties, rents, fees (other than those collected pursuant to section 7307(d)(2)(A) or section 7503(b) of this title), interest charges or other income derived from the leasing of oil and gas resources within the Arctic National Wildlife Refuge, Alaska shall be distributed as follows:

- (a) 50 per centum to the State of Alaska; and
- (b) 50 per centum to the United States.

SEC. 7602. ENERGY SECURITY FUND.—(a) **IN GENERAL.**—(1) Revenues distributed to the United States pursuant to subsection 7601(b) of this title shall be deposited into a special account in the Treasury which shall be known as the Energy Security Fund. Revenues deposited in the Energy Security Fund may be expended solely for the purposes and in the manner provided for in this subtitle. Funds credited to the Energy Security Fund shall remain available until expended.

(2) The Secretary of the Treasury shall invest funds credited to the Energy Security Fund in public debt securities with maturities suitable to the needs of the Energy Security Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. Income from such securities shall be added to the principal of the Energy Security Fund.

(b) **ENERGY SECURITY PROJECTS LIST.**—(1) Not later than thirty days after the date of enactment of this title, the Secretary of Energy shall initiate a process to identify and prepare a list, in descending order of priority, of energy-related projects or programs to enhance the Nation's energy security and reduce dependence on imported oil (hereinafter in this subtitle referred to as "the list"). In preparing the list, the Secretary of Energy shall consult with such governmental or non-governmental entities or individuals as the Secretary deems necessary.

(2) Following notice and comment, the initial list shall be transmitted to the Congress as part of the first budget submitted by the President following the initial deposit of funds in the Energy Security Fund.

(3) Thereafter, annual revisions of the list shall be prepared and transmitted in accordance with paragraph 2.

(c) **PROJECTS.**—The list shall consist of specific projects or programs (including an estimate of the costs thereof) identified by the Secretary of Energy relating to: energy efficiency and conservation, energy efficiency in transportation, energy research, development demonstration and commercialization; fossil energy, including clean coal technology and oil and gas extraction, electrical energy

transmission and generation; and renewable energy resources, such as solar, geothermal, and hydroelectric power.

(d) CONSIDERATIONS.—In identifying projects or programs for inclusion on the list, the Secretary of Energy shall give special consideration to those which—

- (1) minimize or reduce reliance on imported oil;
- (2) reduce energy costs to consumers;
- (3) enhance reliability of energy supplies and national security;
- (4) foster the commercialization of new energy technologies;
- (5) increase the efficient use of nonrenewable resources such as coal, natural gas, and oil;
- (6) have the least potential social costs and adverse impacts on the environment; and
- (7) enhance the diversification of the Nation's domestic energy supply.

(e) NOTIFICATION.—The Secretary of the Treasury shall notify the Congress and the Secretary of Energy on an annual basis as to the amounts available for allocation from the Energy Security Fund.

(f) AUTHORIZATION OF APPROPRIATIONS.—Beginning with the first full fiscal year after funds are initially deposited into the Energy Security Fund pursuant to subsection (b), there are hereby authorized to be appropriated from the Energy Security Fund, such sums as may be necessary to carry out projects identified on the list.

SEC. 7603. FUNDING FOR ARCTIC RESEARCH PROGRAMS.—(a) IN GENERAL.—There is hereby authorized to be appropriated from the Energy Security Fund, for a period of five fiscal years commencing with the first full fiscal year after funds are initially deposited in the Energy Security Fund, not to exceed \$20,000,000 annually to be used to fund high priority arctic research projects and programs related to, among other things, understanding the long and short term effects of energy development and production activities on the arctic environment. To be eligible for funding under this section, the project or program must be identified in accordance with subsection (b).

(b) ARCTIC RESEARCH PROJECTS LIST.—(1) Not later than two years after the date of enactment of this title, the Chairman of the Interagency Arctic Research Policy Committee shall, with the concurrence of the Arctic Research Commission, prepare a list of arctic research projects and programs as described in subsection (a) which will be eligible for funding under this section.

(2) The list referred to in paragraph (1) shall be transmitted to the Congress as part of the first budget submitted by the President following the initial deposit of funds in the Energy Security Fund. Thereafter, revisions of the list shall be prepared in accordance with paragraph (1) and transmitted to the Congress as part of the President's budget submission.

Subtitle G—Export Restrictions

SEC. 7701. CRUDE OIL EXPORT RESTRICTIONS.—(a) IN GENERAL.—Notwithstanding any other provision of law, no crude oil produced from lands in the Coastal Plain (except any such crude oil which (1) is exported to an adjacent foreign country to be refined and con-

sumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in subsection (b)(1)(B) of this section, (2) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, or (3) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of fifty thousand barrels per day, in addition to exports under paragraphs (1) and (2), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code) may be exported from the United States, or any of its territories and possessions, subject to subsection (b) of this section.

(b) **EXCEPTIONS.**—Crude oil subject to the prohibition contained in subsection (a) may be exported only if—

(1) the President so recommends to the Congress after making and publishing express findings that exports of such crude oil, including exchanges—

(A) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(B) will, within three months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 per centum of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(C) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(D) are clearly necessary to protect the national interest; and

(E) are in accordance with the provisions of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.); and

(2) the President includes such findings in his recommendation to the Congress, and the Congress, within sixty days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

(c) **EXPORT AGREEMENTS.**—Notwithstanding any other provision of this section or any other provision of law, the President may export oil produced from lands in the Coastal Plain to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such Nation before June 25, 1979, or to meet obligations of the United States under the International Energy Program in accordance with voluntary agreements or plans of action under section 252 of the Energy Policy and Conservation Act.

Subtitle H—Outer Continental Shelf Leasing Moratoria

SEC. 7801. PROHIBITION OF LEASING AND PRELEASING ACTIVITY.—The Secretary shall not prepare for or conduct any preleasing or leasing activity under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), with respect to the area seaward from the State of California and the State of New Jersey until after January 1, 2000.

TITLE VIII—ADVANCED NUCLEAR REACTOR COMMERCIALIZATION

SEC. 8101. SHORT TITLE.—This title may be cited as the “Civilian Advanced Nuclear Reactor Commercialization Act of 1991.”

SEC. 8102. FINDINGS, PURPOSES, AND DEFINITIONS.—(a) **FINDINGS.**—Congress finds that—

(1) energy generated from nuclear fission now supplants the burning of fossil fuels in an economical fashion and contributes substantially to safe and reliable supplies of electricity while reducing the rate and scope of environmental pollution and reducing dependence on foreign energy sources; and

(2) it is in the national interest for the Federal Government to provide leadership in encouraging advanced nuclear reactor technologies so that such technologies may be adopted as needed.

(b) **PURPOSES.**—The purposes of this title are to—

(1) require the Secretary to carry out the Department’s civilian nuclear programs in a way that will lead toward commercialization of advanced nuclear reactor technologies; and

(2) authorize such activities to ensure the timely availability of advanced nuclear reactor technologies, including technologies that utilize standardized designs or exhibit passive safety features.

(c) **DEFINITIONS.**—For purposes of this title, the term—

(1) “advanced nuclear reactor technologies” means—

(A) advanced light water reactors that may be commercially available in the near-term, including but not limited to mid-sized, passively-safe reactors, for the generation of commercial electric power from nuclear fission;

(B) other advanced nuclear reactor technologies that may require prototype demonstration prior to commercial availability in the mid- or long-term, including but not limited to high-temperature, gas-cooled reactors and liquid metal reactors, for the generation of commercial electric power from nuclear fission.

(2) “Commission” means the Nuclear Regulatory Commission;

(3) “Department” means the Department of Energy;

(4) “standardized design” means a design for a nuclear power plant that may be utilized for a multiple number of units or a multiple number of sites; and

(5) “certification” means approval by the Commission of a standardized design for a nuclear power plant.

SEC. 8103. PROGRAM, GOALS, AND PLAN.—(a) **PROGRAM.**—The Secretary shall carry out a comprehensive program in accordance with

the provisions of this title to encourage the deployment of advanced nuclear reactor technologies that to the maximum extent practicable—

(1) are cost-effective in comparison to alternative sources of commercial electric power of comparable availability and reliability, including consideration of the impact on the rate and scope of global climate change;

(2) utilize modular construction techniques;

(3) facilitate design, licensing, construction, and operation of a nuclear power plant using a standardized design;

(4) exhibit enhanced safety features; and

(5) incorporate features that advance the objectives of the Nuclear Nonproliferation Act by discouraging diversion of fissile material for use in nuclear weapons.

(b) GOALS.—(1) The program authorized under subsection (a) shall be designed to accomplish the following goals—

(A) completion of necessary research and development and first-of-a-kind engineering on advanced light water reactor technologies that will support commercialization of these technologies by 1995;

(B) development and submission for certification by the Commission by 1995 of completed standardized designs for advanced light water reactor technologies that the Secretary determines exhibit some or all of the characteristics set forth in subsection (a);

(C) completion of necessary research and development on high-temperature gas-cooled reactor technology and liquid metal reactor technology that will support selection in 1996 of one or both of these two technologies, as appropriate, for prototype demonstration pursuant to section 8105; and

(D) commercialization of advanced reactor technologies capable of providing commercial electric power to a utility grid as soon as practicable but no later than the year 2010.

(2) The program authorized under subsection (a) shall be carried out to the maximum extent possible through cost-shared programs with the private sector.

(c) PROGRAM PLAN.—(1) Within ninety days after the date of enactment of this title, the Secretary shall prepare and submit to Congress a detailed five-year program plan to carry out the purposes of this title. The plan shall include schedule milestones, Federal funding requirements, and requirements for private sector cost-sharing necessary for meeting the goals of subsection (b).

(2) In preparing the plan, the Secretary shall take into consideration—

(A) the need for, and the potential for adoption in the future by electric utilities or other entities, of advanced nuclear reactor technologies that are available or under development for the generation of energy from nuclear fission;

(B) how the Federal Government, acting through the Secretary, can be effective in ensuring the availability of these advanced nuclear reactor technologies when they may be needed;

(C) how the Federal Government can work most effectively in cooperation with the private sector toward accomplishment of the goals laid out in subsection (b); and

(D) potential alternative funding sources for carrying out the purposes of this title.

(3) The plan under this section shall be updated annually, if necessary, to reflect any schedule slippage, funding shortfalls, or other circumstances that might impact the ability of the Secretary to fulfill the goals outlined in subsection (b).

(4) In preparing the plan required under this section, the Secretary shall offer members of the public an opportunity to provide information and comment and shall solicit the views of the Commission and other interested parties.

SEC. 8104. COMMERCIALIZATION OF ADVANCED LIGHT WATER REACTOR TECHNOLOGY.—(a) **CERTIFICATION OF DESIGNS.**—In order to achieve the goal of certification of completed standardized designs by the Commission by 1995 as set forth in section 8103(b), the Secretary—

(1) shall conduct a program of technical and financial assistance to encourage the development and submission for certification of advanced light water reactor designs which, in the judgment of the Secretary, can be certified by the Commission by no later than the end of calendar year 1995;

(2) may enter into cooperative agreements with one or more private parties who agree to seek certification by the Commission of advanced light water reactor designs that further the purposes of section 8103(a); and

(3) may support through cost-shared agreements the engineering and research and development necessary to achieve certification of advanced light water reactor designs that further the purposes of section 8103(a).

(b) **SECRETARY'S REPORT TO CONGRESS.**—The Secretary shall transmit to Congress with its annual budget request a report describing progress in implementing this section and plans for the current and subsequent fiscal years.

(c) **REPORT TO CONGRESS FROM THE COMMISSION.**—The Commission shall transmit to Congress with its annual budget request a report describing progress in the certification of standardized advanced light water reactor designs, plans for the current and subsequent fiscal years, and resource requirements necessary to comply with the schedules established by the Commission.

SEC. 8105. PROTOTYPE DEMONSTRATION OF ADVANCED NUCLEAR REACTOR TECHNOLOGY.—(a) **SOLICITATION OF PROPOSALS.**—(1) Within three years after the date of enactment of this title, the Secretary shall solicit proposals to carry out the preliminary engineering design of one or more prototype advanced nuclear reactor technologies (other than an advanced light water reactor) necessary to support a decision on whether to recommend construction of a full-scale prototype demonstration utilizing such a technology to achieve the purposes of this title.

(2) The engineering design proposals under paragraph (1) shall be for prototype advanced nuclear reactors that—

(A) to the maximum extent practicable, exhibit the characteristics set forth in section 8103(a); and

(B) are of sufficient size to address the requirements for certification by the Commission of a completed standardized design for an advanced nuclear reactor technology.

(b) **RECOMMENDATION.**—(1) No later than January 31, 1996, the Secretary shall make a recommendation to Congress on whether to build one or more full-scale prototype demonstration reactors utilizing advanced nuclear technology developed by the Department under the program authorized by this title.

(2) Any recommendation to build a prototype demonstration reactor shall—

(A) specify a preferred technology or technologies;

(B) include detailed information on schedule milestones for licensing, construction, and operation; and

(C) estimate the funding requirements and specify the extent and nature of anticipated non-Federal support which shall be not less than 50 per centum of the costs of such demonstration.

(3) As part of the recommendation required under this section, the Secretary shall also submit to Congress any recommended changes in Federal statute or regulations that would improve the prospects of successful and timely licensing of any prototype demonstration reactor.

(c) **SELECTION OF TECHNOLOGY.**—Any technology selected by the Secretary for recommendation for prototype demonstration shall to the maximum extent possible exhibit the characteristics set forth in section 8103(a).

(d) **OPPORTUNITY FOR PUBLIC COMMENT.**—In developing the recommendation required under this section, the Secretary shall offer members of the public an opportunity to provide information and comment and shall solicit the views of the Commission and other interested parties.

(e) **SOLICITATION OF PROPOSALS FOR DEMONSTRATION.**—At any time after one hundred and eighty-calendar days after submission of the recommendation to Congress required under subsection (b), the Secretary, subject to appropriations, may solicit proposals to implement the recommendation.

SEC. 8106. AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this title.

TITLE IX—NUCLEAR REACTOR LICENSING

SEC. 9101. SHORT TITLE.—This title may be cited as the “Nuclear Reactor Licensing Act of 1991.”

SEC. 9102. COMBINED LICENSES.—Section 185 of the Atomic Energy Act of 1954 (42 U.S.C. 2235) is amended by—

(1) adding “and Operating Licenses” after “Permits” in the catchline;

(2) adding a subsection designator “a.” before “All”; and,

(3) adding the following new subsection:

“b. After holding a public hearing under section 189 a.(1)(A) of this Act, the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission’s rules and regulations. The Commission shall identify within the com-

bined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall satisfy itself that the prescribed acceptance criteria are met."

SEC. 9103. POST-CONSTRUCTION HEARINGS ON COMBINED LICENSES.—Section 189 a. (1) of the Atomic Energy Act of 1954 is amended by:

- (1) adding a subparagraph designator "(A)" before "In" and
- (2) adding the following new subparagraph:

"(B)(i) Not less than one hundred and eighty days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 185 b., the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within sixty days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

"(ii) A request for hearing under this subparagraph shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

"(iii) After receiving a request for a hearing under this subparagraph, the Commission expeditiously shall either deny or grant the request. If a hearing is held, commencement of plant operation shall not be delayed pending a decision unless the Commission determines, after considering petitioners' prima facie showing and any answers thereto, that petitioners are likely to succeed on the merits and that there will not be reasonable assurance of adequate protection of the public health and safety.

"(iv) A hearing under this subparagraph shall be informal, but parties shall be allowed to offer evidence, under oath or affirmation. Discovery and cross-examination of witnesses shall not be permitted, unless the Commission determines that discovery, cross-examination, or other procedure is necessary to the resolution of a substantial dispute of material fact.

"(v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within one hundred and eighty days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A)."

SEC. 9104. RULEMAKING.—The Nuclear Regulatory Commission shall propose regulations implementing this title within one year of the date of enactment of this Act.

SEC. 9105. AMENDMENT OF A COMBINED LICENSE PENDING A HEARING.—Section 189 a. (2) of the Atomic Energy Act of 1954 is amended by inserting “or any amendment to a combined construction and operating license” after “any amendment to an operating license” each time it occurs.

SEC. 9106. CONFORMING AMENDMENT.—The table of contents of the Atomic Energy Act of 1954 is amended by amending the item relating to section 185 to read as follows:

“Sec. 185. Construction Permits and Operating Licenses.”.

SEC. 9107. EFFECT ON PENDING PROCEEDINGS.—The provisions of this title apply to all proceedings involving a combined license for which an application was filed after May 8, 1991.

TITLE X—URANIUM

Subtitle A—Uranium Enrichment

SEC. 10101. SHORT TITLE.—This subtitle may be cited as the “Uranium Enrichment Act of 1991.”

SEC. 10102. DELETION OF SECTION 161 v.—Section 161 v. of the Atomic Energy Act of 1954, as amended, is deleted and the remaining subsections are relettered accordingly.

SEC. 10103. REDIRECTION OF THE URANIUM ENRICHMENT ENTERPRISE OF THE UNITED STATES.—The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011-2296) is further amended by—

(a) inserting at the commencement thereof after the words “ATOMIC ENERGY ACT OF 1954”:

“TITLE I—ATOMIC ENERGY”;

and

(b) adding at the end thereof the following:

“TITLE II—UNITED STATES ENRICHMENT CORPORATION

“CHAPTER 21. FINDINGS

“SEC. 1101. FINDINGS.—The Congress of the United States finds that:

“a. The enrichment of uranium is essential to the national security and energy security of the United States.

“b. A competitive, well-managed and efficient enrichment enterprise provides important economic benefits to the United States and contributes to a highly favorable foreign trade balance.

“c. A strong United States enrichment enterprise promotes United States nonproliferation policies by requiring accountability for United States enriched uranium.

“d. The operation of uranium enrichment facilities must meet high standards for environmental health and safety.

“e. The operation and management of a uranium enrichment enterprise requires a commercial business orientation in order to engender customer support and confidence, and customers, rather than the taxpayers at large, should bear the costs of commercial uranium enrichment services.

"f. The optimal level of expenditures for the uranium enrichment enterprise fluctuates and cannot be accurately predicted or efficiently financed if subject to annual authorization and appropriation.

"g. Flexibility is essential to adapt business operations to a competitive marketplace.

"h. The events of the recent past, including the emergence of foreign competition, have brought new and unforeseen forces to bear upon the management and operation of the Government's uranium enrichment enterprise.

"i. The present operation of the uranium enrichment enterprise must be changed so as to further the national interest in the enterprise and respond to the competitive demand placed upon it by market forces, while continuing to meet the paramount objective of ensuring the Nation's common defense and security.

"CHAPTER 22. DEFINITIONS, ESTABLISHMENT OF CORPORATION AND PURPOSES

"SEC. 1201. DEFINITIONS.—For the purpose of this title:

"a. The term 'Secretary' means the Secretary of Energy.

"b. The term 'Department' means the Department of Energy of the United States.

"c. The term 'Administrator' means the chief executive officer of the United States Enrichment Corporation.

"d. The term 'Corporation' means the United States Enrichment Corporation.

"e. The term 'Corporate Board' means the appointed members of the official advisory panel appointed by the President pursuant to section 1503 of this title.

"f. The term 'uranium enrichment' means the separation of uranium of a given isotopic content into two components, one having a higher percentage of a fissile isotope and one having a lower percentage.

"g. The term 'remedial action' has the same meaning as defined in section 120(24) of the Comprehensive Environmental Response, Compensation and Liability Act.

"h. The term 'decontamination and decommissioning' means those activities undertaken to decontaminate and decommission inactive facilities that have residual radioactive or mixed radioactive and hazardous chemical contamination.

"SEC. 1202. ESTABLISHMENT OF THE CORPORATION.—

"a. There is hereby created a body corporate to be known as the 'United States Enrichment Corporation'.

"b. The Corporation shall—

"(1) be established as a wholly owned Government corporation subject to the Government Corporation Control Act, as amended (31 U.S.C. 9101-9109), except as otherwise provided herein; and

"(2) be an agency and instrumentality of the United States.

"SEC. 1203. PURPOSES.—The Corporation is created for the following purposes:

"a. to acquire feed material for uranium enrichment, enriched uranium, the Department's uranium previously set aside for commercial purposes, and the Department's uranium enrichment and related facilities;

"b. to operate, and as required by business conditions, to expand or construct facilities for uranium enrichment or both;

"c. to market and sell enriched uranium and uranium enrichment and related services to—

"(1) the Department for governmental purposes; and

"(2) qualified domestic and foreign persons;

"d. to conduct research and development as required to meet corporate objectives for the purpose of identifying, evaluating, improving and testing processes for uranium enrichment;

"e. to operate, as a commercial enterprise, on a profitable and efficient basis; in order to maximize the long-term economic value of the Corporation to the United States Government including the payment of dividends to the Treasury as a return on the United States Government investment;

"f. to conduct the business as a self-financing corporation and eliminate the need for appropriations or other sources of Government financing after enactment of this title;

"g. to maintain a reliable and economical domestic source of enrichment services;

"h. to conduct its activities in a manner consistent with the health and safety of the public;

"i. to continue to meet the paramount objectives of ensuring the Nation's common defense and security (including consideration of United States policies concerning nonproliferation of atomic weapons and other nonpeaceful uses of atomic energy); and

"j. to take all other lawful action in furtherance of the foregoing purposes.

"CHAPTER 23. CORPORATE OFFICES

"SEC. 1301. CORPORATE OFFICES.—The Corporation shall maintain an office for the service of process and papers in the District of Columbia, and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. The Corporation may establish offices in such other place or places as it may deem necessary or appropriate in the conduct of its business.

"CHAPTER 24. POWERS AND DUTIES OF THE CORPORATION

"SEC. 1401. SPECIFIC CORPORATE POWERS AND DUTIES.—The Corporation—

"a. shall perform uranium enrichment or provide for uranium to be enriched by others at facilities of the Corporation; contracts in existence as of the date of enactment of this title between the Department and persons under contract to perform uranium enrichment and related services at facilities of the Department shall continue in effect as if the Corporation, rather than the Department, had executed these contracts;

"b. shall conduct, or provide for the conduct of, research and development activities related to the isotopic separation of ura-

niium as the Corporation deems necessary or advisable for purposes of maintaining the Corporation as a continuing, commercial enterprise operating on a profitable and efficient basis;

"c. may acquire or distribute enriched uranium, feed material for uranium enrichment or depleted uranium in transactions with—

"(1) persons licensed under sections 53, 63, 103, or 104 of title I in accordance with the licenses held by such persons;

"(2) persons in accordance with, and within the period of, an agreement for cooperation arranged pursuant to section 123 of title I; or

"(3) as otherwise authorized by law;

"d. may—

"(1) enter into contracts with persons licensed under section 53, 63, 103, or 104 of title I for such periods of time as the Corporation may deem necessary or desirable, to provide uranium or uranium enrichment and related services; and

"(2) enter into contracts to provide uranium or uranium enrichment and related services in accordance with, and within the period of, an agreement for cooperation arranged pursuant to section 123 of title I or as otherwise authorized by law;

"e. shall sell to the Department as provided in this title, and without regard to section 57 e. of title I or the provisions of section 1535 of title 31, United States Code, such amounts of uranium or uranium enrichment and related services as the Department may determine from time to time are required: (1) for the Department to carry out Presidential direction and authorizations pursuant to section 91 of title I; and (2) for the conduct of other Department programs;

"f. may grant licenses, both exclusive and nonexclusive, for the use of patent and patent applications owned by the Corporation, and establish and collect charges, in the form of royalties or otherwise, for utilization of Corporation-owned facilities, equipment, patents, and technical information of a proprietary nature pertaining to the Corporation's activities.

"SEC. 1402. GENERAL POWERS OF THE CORPORATION.—In order to accomplish the purposes of this title, the Corporation—

"a. shall have perpetual succession unless dissolved by Act of Congress;

"b. may adopt, alter, and use a corporate seal, which shall be judicially noticed;

"c. may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings;

"d. may indemnify the Administrator, officers, attorneys, agents and employees of the Corporation for liabilities and expenses incurred in connection with their corporate activities;

"e. may adopt, amend, and repeal bylaws, rules and regulations governing the manner in which its business may be conducted and the power granted to it by law may be exercised and enjoyed;

"f. (1) may acquire, purchase, lease, and hold real and personal property including patents and proprietary data, as it deems necessary in the transaction of its business, and sell, lease, grant, and dispose of such real and personal property, as it deems necessary to effectuate the purposes of this title and without regard to the Federal Property and Administrative Services Act of 1949, as amended;

"(2) purchases, contracts for the construction, maintenance, or management and operation of facilities and contracts for supplies or services, except personal services, made by the Corporation shall be made after advertising, in such manner and at such times sufficiently in advance of opening bids, as the Corporation shall determine to be adequate to insure notice and an opportunity for competition; *Provided*, That advertising shall not be required when the Corporation determines that the making of any such purchase or contract without advertising is necessary in the interest of furthering the purposes of this title, or that advertising is not reasonably practicable;

"g. with the consent of the agency or government concerned, may utilize or employ the services or personnel of any Federal Government agency, or any State or local government, or voluntary or uncompensated personnel to perform such functions on its behalf as may appear desirable;

"h. may enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its business and on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, territory or possession, or with any political subdivision thereof, or with any person, firm, association, or corporation;

"i. may determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of this title and other provisions of law specifically applicable to whollyowned Government corporations;

"j. notwithstanding any other provision of law, and without need for further appropriation, may use monies, unexpended appropriations, revenues and receipts from operations, amounts received from obligations issued and other assets of the Corporation in accordance with section 1505, without fiscal year limitation, for the payment of expenses and other obligations incurred by the Corporation in carrying out its functions under, and within the requirements of, this title; and shall not be subject to apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code.

"k. may settle and adjust claims held by the Corporation against other persons or parties and claims by other persons or parties against the Corporation;

"l. may exercise, in the name of the United States, the power of eminent domain for the furtherance of the official purposes of the Corporation;

"m. shall have the priority of the United States with respect to the payment of debts out of bankrupt, insolvent, and decedents' estates;

"n. may define appropriate information as 'Government Commercial Information' and exempt such information from mandatory release pursuant to section 552(b)(3) of title 5, United States Code, when it is determined by the Administrator that such information if publicly released would harm the Corporation's legitimate commercial interests or those of a third party;

"o. may request, and the Administrator of General Services, when requested, shall furnish the Corporation such services as he is authorized to provide agencies of the United States;

"p. may accept gifts or donations of services, or of property, real, personal, mixed, tangible or intangible, in aid of any purposes herein authorized; and

"q. may execute, in accordance with its bylaws, rules and regulations, all instruments necessary and appropriate in the exercise of any of its powers.

"r. shall pay any settlement or judgment entered against it from the Corporation's own funds and not from the Judgment Appropriation (31 U.S.C. 1304). The provisions of the Federal Tort Claims Act (28 U.S.C. 1346(b) and 2671 et seq.) shall not apply to any claims arising from the activities of the Corporation after the effective date of this statute; Provided, That this subsection shall not apply to liability or claims arising from a nuclear incident, if such incident occurs prior to the licensing of the Corporation's existing Gaseous Diffusion Facilities under Section 1601 of this title.

"SEC. 1403. CONTINUATION OF CONTRACTS, ORDERS, PROCEEDINGS AND REGULATIONS.—

"a. Except as provided elsewhere in this title, all contracts, agreements, and leases with the Department, and licenses, and privileges that have been afforded to the Department prior to the date of the enactment of this title and that relate to uranium enrichment, including all enrichment services contracts, power purchase contracts and the December 18, 1987 Settlement Agreement with the Tennessee Valley Authority regarding payment of capacity charges under the Department's two power contracts with the Tennessee Valley Authority, shall continue in effect as if the Corporation had executed such contracts, agreements, or leases or had been afforded such licenses and privileges.

"b. As related to the functions vested in the Corporation by this title, all orders, determinations, rules, regulations and privileges of the Department shall continue in effect and remain applicable to the Corporation until modified, terminated, superseded, set aside or revoked by the Corporation, by any court of competent jurisdiction, or by operation of law unless otherwise specifically provided in this title.

"c. Except as provided in section 1404, the transfer of functions related to and vested in the Corporation by this title shall not affect proceedings judicial or otherwise, relating to such functions which are pending at the time this title takes effect; and such proceedings shall be continued with the Corporation, as appropriate.

"SEC. 1404. LIABILITIES.—Except as provided elsewhere in this title, all liabilities attributable to operation of the uranium enrichment enterprise prior to the date of the enactment of this title shall remain direct liabilities of the Government of the United States; with regard to any claim seeking to impose such liability, section 1403 shall not be applicable and the United States shall be represented by the Department of Justice.

"CHAPTER 25. ORGANIZATION, FINANCE AND MANAGEMENT

"SEC. 1501. ADMINISTRATOR.—

"a. The management of the Corporation shall be vested in an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation. The Administrator shall be a person who, by reason of professional background and experience is specially qualified to manage the Corporation; *Provided*, however, That upon enactment of this title, the President shall appoint an existing officer or employee of the United States to act as Administrator until the office is filled.

"b. The Administrator—

"(1) shall be the chief executive officer of the Corporation and shall be responsible for the management and direction of the Corporation. The Administrator shall establish the offices, appoint the officers and employees of the Corporation (including attorneys), and define their responsibilities and duties. The Administrator shall appoint other officers and employees as may be required to conduct the Corporation's business;

"(2) shall serve a term of six years but may be reappointed;

"(3) shall, before taking office, take an oath to faithfully discharge the duties thereof;

"(4) shall have compensation determined by the President based upon the recommendation of the Secretary and the Corporate Board as provided in section 1503 d., except that in the absence of such determination compensation shall be set at Executive Level I, as prescribed in section 5312 of title 5, United States Code;

"(5) shall be a citizen of the United States;

"(6) shall designate an officer of the Corporation who shall be vested with the authority to act in the capacity of the Administrator in the event of absence or incapacity; and

"(7) may be removed from office only by the President and only for neglect of duty or malfeasance in office. The President shall communicate the reasons for any such removal to both Houses of Congress at least thirty days prior to the effective date of such removal.

"c. (1) The Secretary shall exercise general supervision over the Administrator only with respect to the activities of the Corporation involving—

"(A) the Nation's common defense and security; and

“(B) health, safety and the environment.

“(2) The Administrator shall be solely responsible for the exercise of all powers and responsibilities that are committed to the Administrator under this title and that are not reserved to the Secretary under paragraph (1), and, notwithstanding the provisions of section 9104(a)(4) of title 31, United States Code, including the setting of the appropriate amount of, and paying, any dividend under section 1506 c. and all other fiscal matters.

“SEC. 1502. DELEGATION.—The Administrator may delegate to other officers or employees powers and duties assigned to the Corporation in order to achieve the purposes of this title.

“SEC. 1503. CORPORATE BOARD.—

“a. There is hereby established a Corporate Board appointed by the President which shall consist of five members, one of whom shall be designated as chairman. Members of the Corporate Board shall be individuals possessing high integrity, demonstrated accomplishment and broad experience in management and shall have strong backgrounds in science, engineering, business or finance. At least one member of the Corporate Board shall be, or previously have been, employed on a full-time basis in managing an electric utility.

“b. (1) The specific responsibilities of the Corporate Board shall be to:

“(A) review the Corporation’s policies and performance and advise the Administrator and the Secretary on these matters; and

“(B) advise the Administrator and the Secretary on any other such matters concerning the Corporation as may be referred to the Corporate Board.

“(2) The Board shall have the right to recommend removal of the Administrator. In the event such recommendation is made, it shall be transmitted to the President by the Secretary, together with the Secretary’s own recommendation on removal of the Administrator.

“c. Members of the Board shall be provided access to all significant reports, memoranda, or other written communications generated or received by the Corporation. At the request of the Board, the Corporation shall make available to the Board all financial records, reports, files, papers and memoranda of, or in use by, the Corporation.

“d. When appropriate, the Corporate Board may make recommendations to the Secretary concerning the compensation to be received by the Administrator and the ten officers of the Corporation who may receive compensation in excess of Executive Level II as provided in section 1504 b. The Secretary shall transmit such recommendations to the President together with the Secretary’s own recommendations concerning compensation. In the event that less than three members of the Corporate Board are in office, recommendations concerning compensation may be made by the Secretary alone. The President shall have the power to enter into binding agreements concerning compensation to be received by the Administrator during his term of office and by the ten officers described in section

1504 b. during their term of employment, regardless of any recommendation received or not received under this title.

"e. Except for initial appointments, members of the Corporate Board shall serve five-year terms. Each member of the Corporate Board shall be a citizen of the United States. No more than three members of the Board shall be members of any one political party. Of those first appointed, the chairman shall serve for the full five-year term; one member shall serve for a term of four years; one shall serve for a term of three years; one shall serve for a term of two years; and one shall serve for a term of one year.

"f. Upon expiration of the initial term, each Corporate Board member appointed thereafter shall serve a term of five years. Upon the occurrence of a vacancy on the Board, the President shall appoint an individual to fill such vacancy for the remainder of the applicable term. Upon expiration of a term, a Board member may continue to serve up to a maximum of one year or until a successor shall have been appointed and assumed office, whichever occurs first.

"g. The members of the Corporate Board in executing their duties shall be governed by the laws and regulations regarding conflicts of interest, but exempted from other provisions and authority prescribed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2).

"h. The Corporate Board shall meet at any time pursuant to the call of the Chairman and as provided by the bylaws of the Corporation, but not less than quarterly. The Administrator or his representative shall attend all meetings of the Corporate Board.

"i. The Corporation shall compensate members of the Corporate Board at a per diem rate equivalent to Executive Level III, as defined in section 5314 of title 5, United States Code, in addition to reimbursement of reasonable expenses incurred when engaged in the performance of duties vested in the Corporate Board. Any Corporate Board member who is otherwise a Federal employee shall not be eligible for compensation above reimbursement for reasonable expenses incurred while attending official meetings of the Corporation.

"j. (1) The Corporate Board shall report at least annually to the Administrator on the performance of the Corporation and the issues that, in the opinion of the Board, require the attention of the Administrator. Any such report shall include such recommendations as the Board finds appropriate. A copy of any report under this subsection shall be transmitted promptly to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate, and the Speaker of the House of Representatives.

"(2) Within ninety days after the receipt of any report under this subsection the Administrator shall respond in writing to such report and provide an analysis of such recommendations of the Board contained in the report. Such response shall include plans for implementation of each recommendation or a justification for not implementing such recommendation. A copy of any response under this subsection shall be transmit-

ted promptly to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate, and the Speaker of the House of Representatives.

"SEC. 1504. EMPLOYEES OF THE CORPORATION.—

"a. Officers and employees of the Corporation shall be officers and employees of the United States.

"b. The Administrator shall appoint all officers, employees and agents of the Corporation as are deemed necessary to effect the provisions of this title without regard to any administratively imposed limits on personnel, and any such officer, employee or agent shall only be subject to the supervision of the Administrator. The Administrator shall fix all compensation in accordance with the comparable pay provisions of section 5301 of title 5, United States Code, with compensation levels not to exceed Executive Level II, as defined in section 5313 of title 5, United States Code: *Provided*, That the Administrator may, upon recommendation by the Secretary and the Corporate Board as provided in section 1503 d. and approval by the President, appoint up to ten officers whose compensation shall not exceed an amount which is 20 per centum less than the compensation received by the Administrator, but not less than Executive Level II. The Administrator shall define the duties of all officers and employees and provide a system of organization inclusive of a personnel management system to fix responsibilities and promote efficiency. The Corporation shall assure that the personnel function and organization is consistent with the principles of section 2301(b) of title 5, United States Code, relating to merit system principles. Officers and employees of the Corporation shall be appointed, promoted and assigned on the basis of merit and fitness, and other personnel actions shall be consistent with the principles of fairness and due process but without regard to those provisions of title 5 of the United States Code governing appointments and other personnel actions in the competitive service.

"c. Any Federal employee hired before January 1, 1984, who transfers to the Corporation and who on the day before the date of transfer is subject to the Federal Civil Service Retirement System (5 U.S.C. chapter 83, subchapter III) shall remain within the coverage of such system unless he or she elects to be subject to the Federal Employees' Retirement System. For those employees remaining in the Federal Civil Service Retirement System, the Corporation shall withhold pay and shall pay into the Civil Service Retirement and Disability Fund the amounts specified in chapter 83 of title 5, United States Code. Employment by the Corporation without a break in continuity of service shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of title 5, United States Code. Any employee of the Corporation who is not within the coverage of the Federal Civil Service Retirement System shall be subject to the Federal Employees' Retirement System (5 U.S.C. chapter 84). The Corporation shall withhold pay and make such payments as are required under that retirement system. Further:

"(1) Any employee who transfers to the Corporation under this section shall not be entitled to lump sum payments for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the Corporation with the unused annual leave at the time of transfer.

"(2) An employee who does not transfer to the Corporation and who does not otherwise remain a Federal employee shall be entitled to all the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Corporation of work substantially similar to that performed by the employee for the Department.

"d. This section does not affect a right or remedy of an officer, employee, or applicant for employment under a law prohibiting discrimination in employment in the Government on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicap conditions.

"e. Officers and employees of the Corporation shall be covered by chapter 73 of title 5, United States Code, relating to suitability, security and conduct.

"f. Compensation, benefits, and other terms and conditions of employment in effect immediately prior to the effective date of this section, whether provided by statute or by rules and regulations of the Department or the executive branch of the Government of the United States shall continue to apply to officers and employees who transfer to the Corporation from other Federal employment until changed by the Corporation in accordance with the provisions of this title.

"g. The provisions of sections 3323(a) and 8344 of title 5, United States Code, or any other law prohibiting or limiting the reemployment of retired officers or employees or the simultaneous receipt of compensation and retired pay or annuities, shall not apply to officers and employees of the Corporation who have retired from or ceased previous government service prior to April 28, 1987.

"SEC. 1505. TRANSFER OF PROPERTY TO THE CORPORATION.—

"a. The Secretary, as requested by the Administrator, is authorized and directed to transfer without charge to the Corporation all of the Department's right, title, or interest in and to, real or personal properties owned by the Department, or by the United States but under control or custody of the Department, which are related to and materially useful in the performance of the functions transferred by this title, including but not limited to the following—

"(1) production facilities for uranium enrichment inclusive of real estate, buildings and other improvements at production sites and their related and supporting equipment: *Provided*, That facilities, real estate, improvements and equipment related to the Oak Ridge Gaseous Diffusion plant in Oak Ridge, Tennessee, and to the gas centrifuge enrichment program shall not transfer under this paragraph except for diffusion cascades and related equipment

needed by the Corporation for replacement parts: *Provided further*, That any enrichment facilities retained by the Department shall not be used to enrich uranium in competition with the Corporation. This paragraph shall not prejudice consideration of any site as a candidate site for future expansion or replacement of uranium enrichment capacity;

"(2) at such time subsequent to the year 2000 as the Secretary determines that the Oak Ridge Gaseous Diffusion Plant should be decommissioned or decontaminated, or both, the Secretary shall convey without charge equipment and facilities relating to the Oak Ridge Gaseous Diffusion Plant not transferred in paragraph (1) to the Corporation;

"(3) facilities, equipment, and materials for research and development activities related to the isotopic separation of uranium by the gaseous diffusion technology;

"(4) the Department's stocks of preproduced enriched uranium, but excluding stocks of highly enriched uranium: *Provided*, That approximately two metric tons of the Department's highly enriched uranium shall be loaned to the Corporation as required for working inventory;

"(5) the Department's stocks of feed materials for uranium enrichment except for the quantities allocated to the national defense activities of the Department as of the date of enactment;

"(A) the Department's stockpile of enrichment tails existing as of the date of enactment, shall remain with the Department; and

"(B) stocks of feed materials which remain the property of the Department under paragraph (5) shall remain in place at the enrichment plant sites. The Corporation shall have access to and use of these feed materials provided such quantities as are used are replaced, or credit given, if use by the Department is subsequently needed.

"(6) all other facilities, equipment, materials, processes, patents, technical information of any kind, contracts, agreements, and leases to the extent these items concern the Corporation's functions and activities, except those items required for programs and activities of the Department and those items specifically excluded by this subsection.

The transfer authorized by this section is not subject to the requirements of section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act.

"b. The Secretary is authorized and directed to grant to the Corporation without charge the Department's rights and access to the Atomic Vapor Laser Isotope Separation, hereinafter referred to as "AVLIS", technology and to provide on a reimbursable basis and at the request of the Corporation, the necessary cooperation and support of the Department to assure the commercial development and deployment of AVLIS or other

technologies in a manner consistent with the intent of this title.

"c. The Secretary is authorized and directed to grant the Corporation without charge, to the extent necessary or appropriate for the conduct of the Corporation's activities, licenses to practice or have practiced any inventions or discoveries (whether patented or unpatented) together with the right to use or have used any processes and technical information owned or controlled by the Department.

"d. The Secretary is directed, without need of further appropriation, to transfer to the Corporation the unexpended balance of appropriations and other monies available to the Department (inclusive of funds set aside for accounts payable), and accounts receivable which are related to functions and activities acquired by the Corporation from the Department pursuant to this title, including all advance payments.

"e. The President is authorized to provide for the transfer to the Corporation of the use, possession, and control of such other real and personal property of the United States which is reasonably related to the functions performed by the Corporation. Such transfers may be made by the President without charge as he may from time to time deem necessary and proper for achieving the purposes of this title.

"f. Title to depleted uranium resulting from the enrichment services provided to the Department by the Corporation shall remain with the Department.

"SEC. 1506. CAPITAL STRUCTURE OF THE CORPORATION.—

"a. Upon commencement of operations of the Corporation, all liabilities then chargeable to unexpended balances of appropriations transferred under section 1505 shall become liabilities of the Corporation.

"b. (1) The Corporation shall issue capital stock representing an equity investment equal to the book value of assets transferred to the Corporation, as reported in the Uranium Enrichment Annual Report for fiscal year 1987, modified to reflect continued depreciation and other usual changes that occur up to the date of transfer. The Secretary of the Treasury shall hold such stock for the United States: *Provided*, That all rights and duties pertaining to management of the Corporation shall remain vested in the Administrator as specified in section 1501.

"(2) The capital stock of the Corporation shall not be sold, transferred, or conveyed by the United States unless such disposition is specifically authorized by Federal law enacted after enactment of this title.

"c. The Corporation shall pay into miscellaneous receipts of the Treasury of the United States or such other fund as provided by law, dividends on the capital stock, out of earnings of the Corporation, as a return on the investment represented by such stock. The Corporation shall pay such dividends out of earnings, unless there is an overriding need to retain these funds in furtherance of other corporate functions including but not limited to research and development, capital investments and establishment of cash reserves.

"d. The Corporation shall repay within a twenty-year period the amount of \$364,000,000 into miscellaneous receipts of the Treasury of the United States, or such other fund as provided by law with interest on the unpaid balance from the date of enactment of this title at a rate equal to the average yield on twenty-year Government obligations as determined by the Secretary of the Treasury on the date of enactment of this title. The money required to be repaid under this subsection is hereinafter referred to as the 'Initial Debt'.

"e. Receipt by the United States of the stock issued by the Corporation (including all rights appurtenant thereto) together with repayment of the Initial Debt shall constitute the sole recovery by the United States of previously unrecovered costs that have been incurred by the United States for uranium enrichment activities prior to enactment of this title.

"SEC. 1507. BORROWING.—

"a. (1) The Corporation is authorized to issue and sell bonds, notes, and other evidences of indebtedness (hereinafter collectively referred to as "bonds") in an amount not exceeding \$2,500,000,000 outstanding at any one time to assist in financing its activities and to refund such bonds. The principal of and interest on said bonds shall be payable from revenues of the Corporation.

"(2) Notwithstanding any other provision of law, the Corporation may pledge and use its revenues for payment of the principal of and interest on said bonds, for purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve funds and other funds which may be similarly pledged and used, to such extent and in such manner as it may deem necessary or desirable.

"(3) Notwithstanding any other provision of law, the Corporation is authorized to enter into binding covenants with the holders of said bonds—and with the trustee, if any—under any indenture, resolution, or other agreement entered into in connection with the issuance thereof with respect to the establishment of reserve funds and other funds, stipulations concerning the subsequent issuance of bonds, and such other matters, not inconsistent with this title, as the Corporation may deem necessary or desirable to enhance the marketability of said bonds.

"(4) Bonds issued by the Corporation hereunder shall not be obligations of, nor shall payments of the principal thereof or interest thereon be guaranteed by, the United States.

"b. Bonds issued by the Corporation under this section shall be negotiable instruments unless otherwise specified therein, shall be in such forms and denominations, shall be sold at such times and in such amounts, shall mature at such time or times not more than thirty years from their respective dates, shall be sold at such prices, shall bear such rates of interest, may be redeemable before maturity at the option of the Corporation in such manner and at such times and redemption premiums, may be entitled to such priorities of claim on the Corporation's revenues with respect to principal and interest payments, and shall be subject to such other terms and conditions, as the Corporation may determine: *Provided*, That at least fifteen days

before selling each issue of bonds hereunder (exclusive of any commitment shorter than one year) the Corporation shall advise the Secretary of the Treasury as to the amount, proposed date of sale, maturities, terms and conditions and expected rates of interest of the proposed issue in the fullest detail possible. The Corporation shall not be subject to the provisions of section 9108 of title 31, United States Code. The Corporation shall be deemed part of an executive department or an independent establishment of the United States for purposes of the provisions of section 78c(c) of title 15, United States Code.

"c. Bonds issued by the Corporation hereunder shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the United States. The Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the bonds of the Corporation acquired by them under this section: *Provided*, That the Corporation shall not issue or sell any bonds to the Federal Financing Bank.

"SEC. 1508. PRICING.—

"a. For purposes of maximizing the long-term economic value of the Corporation to the United States Government, the Corporation shall establish prices for its products, materials and services provided to customers other than the Department on a basis that will, over the long term, allow it to recover its costs for providing the products, materials and services; repay the Initial Debt; recover costs of decontamination, decommissioning and remedial action; and attain the normal business objectives of a profitmaking Corporation.

"b. The Corporation shall establish prices for low assay enrichment services and other products, materials, and services provided the Department on a basis that will allow it to recover its costs on a yearly basis for providing such low assay enrichment services, products, materials and services, including depreciation and the cost of decontamination, decommissioning and remedial action, but excluding repayment of the Initial Debt and profit. In establishing such prices, the base charge paid by the Department in any given year shall not exceed the average base charge paid by customers other than the Department: *Provided, however*, That if the imposition of such average base charges as a limitation on the base charge paid by the Department in a given year does not permit the Corporation to fully recover its costs for providing such products, materials and services to the Department then, in subsequent years, the Corporation shall include such unrecovered costs in its prices charged the Department. Base charge shall mean the amount paid by a customer per separative work unit for low assay enrichment services during a given year (exclusive of any credits received under a voluntary overfeeding program), less the portion of such amount which represents the cost of decontamination and decommissioning and remedial action. The average base charge paid by customers other than the Department shall be determined by dividing the estimated total dollar

amount of low assay enrichment services sales to customers other than the Department during a given year by the estimated amount of separative work units sold to customers other than the Department during that year. Adjustments between estimated and actual amounts shall be made upon receipt of actual sales data.

"c. The Corporation shall establish prices to the Department for high assay enrichment services on a basis that will allow it to recover its costs, on a yearly basis, for providing the products, materials or services, including depreciation and the costs of decontamination, decommissioning, and remedial action concerning enrichment property, but excluding repayment of the Initial Debt and profit. If the Department does not request any enrichment services in a given year, the Department shall reimburse the Corporation for costs required to maintain the minimum level of operation of the high assay production facility.

"d. (1) In accordance with the cost responsibilities defined in paragraphs (3) and (4), the Corporation shall recover from its customers in the prices and charges established in accordance with subsection a., amounts that will be sufficient to pay for the costs of decommissioning, decontamination and remedial action for the various property of the Corporation, including property transferred under section 1505 a. at any time. Such costs shall be based on the point in time that such decommissioning, decontamination and remedial action are to be undertaken and accomplished: *Provided*, That by the year 2000 the Corporation shall have recovered and deposited in the Uranium Enrichment Decontamination and Decommissioning Fund 50 per centum of the estimated total costs of decontamination and decommissioning of all property transferred or to be transferred to the Corporation under section 1505, including the Oak Ridge Gaseous Diffusion Plant.

"(2) In order to meet the objective defined in paragraph (1), the Corporation shall periodically estimate the anticipated or actual costs of decommissioning and decontamination. Such estimates shall reflect any changes in assumptions or expectations relevant to meeting such objective, including, but not limited to, any changes in applicable environmental requirements. Such estimates shall be reviewed at least every two years.

"(3) For purposes of enabling the Corporation to meet the objective defined in paragraph (1) with respect to the Oak Ridge Gaseous Diffusion Plant, the Secretary shall periodically estimate the anticipated costs of decontamination and decommissioning and the time at which such decontamination and decommissioning is to be accomplished. Such estimates shall reflect any changes in assumptions or expectations relevant to meeting such objective, including but not limited to, any changes in applicable environmental requirements. The Secretary shall review such estimates every two years and convey this information to the Corporation.

"(4) With respect to property that has been used in the production of low-assay separative work,

"(A) The costs of decommissioning, decontamination and remedial action that shall be recoverable from customers other than the Department in prices and charges shall be in the same ratio to the total costs of decommissioning, decontamination and remedial action for the property in question as the production of separative work over the life of such property for commercial customers bears to the total production of separative work over the life of such property.

"(B) All other costs of decommissioning, decontamination and remedial action for such property shall be recovered in prices and charges to the Department.

"(5) With respect to property that has been used solely in the production of high-assay separative work, all costs of decommissioning, decontamination and remedial action shall be recovered in prices and charges to the Department.

"SEC. 1509. AUDITS.—In fiscal years during which an audit is not performed by the Comptroller General in accordance with the provisions of section 9105 of title 31, United States Code, the financial transactions of the Corporation shall be audited by an independent firm or firms of nationally recognized certified public accountants who shall prepare such audits using standards appropriate for commercial corporate transactions. The fiscal year of the Corporation shall conform to the fiscal year of the United States. The General Accounting Office shall review such audits annually, and to the extent necessary, cause there to be a further examination of the Corporation using standards for commercial corporate transactions. Such audits shall be conducted at the place or places where the accounts of the Corporation are established and maintained. All books, financial records, reports, files, papers, memoranda, and other property of, or in use by, the Corporation shall be made available to the person or persons authorized to conduct audits in accordance with the provisions of this section.

"SEC. 1510. REPORTS.—

"a. The Corporation shall prepare an annual report of its activities. This report shall contain—

"(1) a general description of the Corporation's operations;

"(2) a summary of the Corporation's operating and financial performance, including an explanation of the decision to pay or not pay dividends; and

"(3) copies of audit reports prepared in conformance with section 1509 of this title and the provisions of the Government Corporation Control Act, as amended.

"b. A copy of the annual report shall be provided to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate, and the appropriate committees of the House of Representatives. Such reports shall be completed not later than ninety days following the close of each fiscal year and shall accurately reflect the financial position of the Corporation at fiscal year end, inclusive of any impairment of capital or ability of the Corporation to comply with the provisions of this title.

"SEC. 1511. CONTROL OF INFORMATION.—

"a. The term 'Commission' shall be deemed to include the Corporation wherever such term appears in section 141 and subsections a. and b. of section 142 of title I.

"b. No contracts or arrangements shall be made, nor any contract continued in effect, under section 1401, 1402, 1403, or 1404, unless the person with whom such contract or arrangement is made, or the contractor or prospective contractor, agrees in writing not to permit any individual to have access to Restricted Data, as defined in section 11 y. of title I, until the Office of Personnel Management shall have made an investigation and report to the Corporation on the character, associations, and loyalty of such individual, and the Corporation shall have determined that permitting such person to have access to restricted data will not endanger the common defense and security.

"c. The restrictions detailed in subsections b., c., d., e., f., g., and h., of section 145 of title I shall be deemed to apply to the Corporation where they refer to the Commission or a majority of the members of the Commission, and to the Administrator where they refer to the General Manager.

"d. The Administrator shall keep the appropriate congressional committees fully and currently informed with respect to all of the Corporation's activities. To the extent consistent with the other provisions of this section, the Corporation shall make available to any of such committees all books, financial records, reports, files, papers, memoranda, or other information possessed by the Corporation upon receiving a request for such information from the chairman of such committee.

"e. Whenever the Corporation submits to the President, or the Office of Management and Budget, any budget, legislative recommendation, testimony, or comments on legislation, prepared for submission to the Congress, the Corporation shall concurrently transmit a copy thereof to the appropriate committees of Congress.

"f. The Corporation shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.

"SEC. 1512. PATENTS AND INVENTIONS.—

"a. The term 'Commission' shall be deemed to include the Corporation wherever such term appears in section 152 or 153 b.(1) of title I. The Corporation shall pay such royalty fees for patents licensed to it under section 153 b.(1) of title I as are paid by the Department under that provision. Nothing in title I or this title shall affect the right of the Corporation to require that patents granted on inventions, that have been conceived or first reduced to practice during the course of research or operations of, or financed by the Corporation, be assigned to the Corporation.

"b. The Department shall notify the Corporation of all reports heretofore or hereafter filed with it under subsection 151 c. of title I and all applications for patents heretofore or hereafter filed with the Commissioner of Patents of which the Department has notice under subsection 151 d. of title I or otherwise, whenever such reports or applications involve matters

pertaining to the functions or responsibilities of the Corporation in accordance with this title. The Department shall make all such reports available to the Corporation, and the Commissioner of Patents shall provide the Corporation access to all such applications. All reports and applications to which access is so provided shall be kept in confidence by the Corporation, and no information concerning the same given without authority of the inventor or owner unless necessary to carry out the provisions of any Act of Congress.

"c. The Corporation, without regard for any of the conditions specified in paragraph 153 c. (1), (2), (3), or (4) of title I, may at any time make application to the Department for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent when such patent has not been declared to be affected with the public interest under subsection 153 b. (1) of title I and when use of such patent is within the Corporation's authority. Any such application shall constitute an application under subsection 153 c. of title I subject, except as specified above, to all the provisions of subsections 153 c., d., e., f., g., and h., of title I.

"d With respect to the Corporation's functions under this title, section 158 of title I shall be deemed to include the Corporation within the phrase, 'any other licensee' in the first sentence thereof and within the phrase 'such licensee' in the second sentence thereof.

"e. The Corporation shall not be liable directly or indirectly for any damages or financial responsibility under section 183 of title 35, United States Code with respect to secrecy orders imposed under section 181 of such title.

"f. The Corporation shall not be liable or responsible for any payments made or awards under subsection 157 b. (3) of title I, or any settlements or judgments involving claims for alleged patent infringement except to the extent that any such awards, settlements or judgments are attributable to activities of the Corporation after the effective date of this title.

"g. The Corporation shall keep currently informed as to matters affecting its rights and responsibilities under chapter 13 of title I as modified by this section and shall take all appropriate action to avail itself of such rights and satisfy such responsibilities. The Department in discharging its responsibilities under chapter 13 of title I shall exercise diligence in informing the Corporation of matters affecting the responsibilities and jurisdiction of the Corporation and seeking and following as appropriate the advice and recommendation of the Corporation in such matters.

"CHAPTER 26. LICENSING, TAXATION, AND MISCELLANEOUS PROVISIONS

"SEC. 1601. LICENSING.—

"a. Notwithstanding any other provision of law, with respect solely to facilities, equipment and materials for activities related to the isotopic separation of uranium by the gaseous diffu-

sion technology at facilities in existence as of the date of enactment of this title, the Corporation and its contractors are hereby exempted from the licensing requirements and prohibitions of sections 57, 62, 81 and other provisions of title I, to the same extent as the Department and its contractors are exempt in regard to the Department's own functions and activities. Such exemption shall remain in effect unless and until the Corporation and its contractors receive all necessary licenses for such facilities, equipment and materials as are required under title I.

"b. Within two years of the enactment of this title, the Commission shall promulgate regulations or issue other regulatory guidance under title I for the licensing of facilities described in subsection a. that employ the gaseous diffusion technology.

"c. Within one year after the promulgation of regulations or the issuance of other regulatory guidance under subsection b., the Corporation and its contractors shall make necessary applications for and otherwise seek to obtain such licenses as will remove the exemption provided under subsection a. As part of its application, the Corporation shall submit an Environmental Impact Statement in accordance with the requirements of the National Environmental Policy Act. The Commission shall adopt this statement to the extent practicable under the National Environmental Policy Act. In preparing such statement, the Corporation, and in making any licensing decision, the Commission, shall not consider the need for such facilities, alternatives to such facilities, or the costs compared to the benefits of such facilities. The Commission shall act on licensing requests by the Corporation in a timely manner.

"d. The Corporation shall not transfer or deliver any source, special nuclear or byproduct materials or production or utilization facilities, as defined in title I, to any person who is not properly qualified or licensed under the provisions of title I.

"e. The Corporation shall be subject to the regulatory jurisdiction of the Commission and the Department of Transportation with respect to the packaging and transportation of source, special nuclear and byproduct materials.

"SEC. 1602. EXEMPTION FROM TAXATION AND PAYMENTS IN LIEU OF TAXES.—

"a. In order to render financial assistance to those States and localities in which the facilities of the Corporation are located, the Corporation is authorized and directed beginning in fiscal year 1997 to make payments to state and local governments as provided in this section. Such payments shall be in lieu of any and all State and local taxes on the real and personal property, activities and income of the Corporation. All property of the Corporation, its activities, and income are expressly exempted from taxation in any manner or form by any State, county, or other local government entity. The activities of the Corporation for this purpose shall include the activities of organizations pursuant to cost-type contracts with the Corporation to manage, operate and maintain its facilities. The income of the Corporation shall include income received by such organizations for the account of the Corporation. The

income of the Corporation shall not include income received by such organizations for their own accounts, and such income shall not be exempt from taxation.

"b. Beginning in fiscal year 1997, the Corporation shall make annual payments, in amounts determined by the Corporation to be fair and reasonable, to the State and local governmental agencies having tax jurisdiction in any area where facilities of the Corporation are located. In making such determinations, the Corporation shall be guided by the following criteria:

"(1) Amounts paid shall not exceed the tax payments that would be made by a private industrial corporation owning similar facilities and engaged in similar activities at the same location: *Provided, however,* That there shall be excluded any amount that would be payable as a tax on net income.

"(2) The Corporation shall take into account the customs and practices prevailing in the area with respect to appraisal, assessment, and classification of industrial property and any special considerations extended to large-scale industrial operations.

"(3) No amount shall be included to the extent that any tax unfairly discriminates against the class of taxpayers of which the Corporation would be a member if it were a private industrial corporation, compared with other taxpayers or classes of taxpayers.

"(4) Following the commencement of payments in fiscal year 1997, no payment made to any taxing authority for any period shall be less than the payments which would have been made to such taxing authority for the same period by the Department and its cost-type contractors on behalf of the Department with respect to property that has been transferred to the Corporation under section 1505 and which would have been attributable to the ownership, management operation, and maintenance of the Department's uranium enrichment facilities, applying the laws and policies prevailing immediately to the enactment of this title.

"c. Payments shall be made by the Corporation at the time when payments of taxes by taxpayers to each taxing authority are due and payable: *Provided,* That no payment shall be made to the extent that the tax would apply to a period prior to fiscal year 1997.

"d. The determination by the Corporation of the amounts due hereunder shall be final and conclusive.

"SEC. 1603. MISCELLANEOUS APPLICABILITY OF TITLE I.—

"a. Any references to the term 'Commission' or to the Department in sections 105 b., 161 c., 161 k., 161 q., 165 a., 221 a., 229, 230 and 232 of title I shall be deemed to include the Corporation.

"b. Section 188 of title I shall apply to licensed facilities of the Corporation. For purposes of applying such section to facilities of the Corporation:

"(1) The term 'Commission' shall be deemed to refer to the Secretary;

"(2) There shall be no requirement for payment of just compensation to the Corporation, and receipts from operation of the facility in question shall continue to accrue to the benefit of the Corporation; and

"(3) The Secretary shall have the discretion to determine how and by whom the facility in question will be operated.

"SEC. 1604. COOPERATION WITH OTHER AGENCIES.—The Corporation is empowered to use with their consent the available services, equipment, personnel, and facilities of other civilian or military agencies and instrumentalities of the Federal Government, on a reimbursable basis and on a similar basis to cooperate with such other agencies and instrumentalities in the establishment and use of services, equipment, and facilities of the Corporation. Further, the Corporation may confer with and avail itself of the cooperation, services, records, and facilities of state, territorial, municipal or other local agencies.

"SEC. 1605. APPLICABILITY OF ANTITRUST LAWS.—

"a. The Corporation shall conduct its activities in a manner consistent with the policies expressed in the antitrust laws, except as required by the public interest.

"b. As used in this subsection, the term 'antitrust laws' means:

"(1) The Act entitled: 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890 (15 U.S.C. 1-7), as amended;

"(2) The Act entitled, 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914 (15 U.S.C. 12-27), as amended;

"(3) Sections 73 and 74 of the Act entitled, 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' approved August 27, 1894 (15 U.S.C. 8-9), as amended; and

"(4) The Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

"SEC. 1606. NUCLEAR HAZARD INDEMNIFICATION.—The Administrator shall have the same authority to indemnify the contractors of the Corporation as the Secretary has to indemnify contractors under section 170 d. of title I. Except that with respect to any licenses issued to the Corporation by the Commission, the Commission shall treat the Corporation and its contractors as its licensees for the purposes of Section 170 of this Act.

"SEC. 1607. INTENT.—It is hereby declared to be the intent of this title to aid the Corporation in discharging its responsibilities under this title by providing it with adequate authority and administrative flexibility to assure the maximum achievement of the purposes hereof as provided herein, and this title shall be construed liberally to effectuate such intent.

"SEC. 1608. REPORT.—

"a. Three years after enactment of this title, the Administrator shall submit to the President and to Congress an interim report setting forth the views and recommendations of the Administrator regarding transfer of the functions, powers, duties, and assets of the Corporation to private ownership. Five years

after enactment of this title, the Administrator shall submit to the President and the Congress a final report setting forth the views and recommendations of the Administrator regarding transfer of the functions, powers, duties, and assets of the Corporation to private ownership. If the Administrator, in the final report, recommends such transfers, the report shall include a plan for implementation of the transfers.

"b. Within one hundred and eighty days after receipt of the final report under subsection a, the President shall transmit to Congress his recommendations regarding the report, including a plan for implementation of any transfers recommended by the President and any recommendations for legislation necessary to effectuate such transfers.

"CHAPTER 27. DECONTAMINATION AND DECOMMISSIONING

"SEC. 1701. ESTABLISHMENT.—

"a. ESTABLISHMENT OF FUND.—(1) There is hereby established in the Treasury of the United States an account of the Corporation to be known as the Uranium Enrichment Decontamination and Decommissioning Fund (hereinafter referred to in this chapter as the 'Fund'). In accordance with section 1402 j., such account and any funds deposited therein, shall be available to the Corporation for the exclusive purpose of carrying out the purposes of this chapter.

"(2) The Fund shall consist of:

"(A) Amounts paid into it by the Corporation in accordance with section 1702; and

"(B) Any interest earned under subsection b.(2).

"b. ADMINISTRATION OF FUND.—(1) The Secretary of the Treasury shall hold the Fund and, after consultation with the Corporation, annually report to the Congress on the financial condition and operations of the Fund during the preceding fiscal year.

"(2) At the direction of the Corporation, the Secretary of the Treasury shall invest amounts contained within such Fund in obligations of the United States:

"(A) Having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Fund, as determined by the Corporation; and

"(B) Bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to such obligations.

"(3) At the request of the Corporation, the Secretary of the Treasury shall sell such obligations and credit the proceeds to the Fund.

"SEC. 1702. DEPOSITS.—Within sixty days of the end of each fiscal year, the Corporation shall make a payment into the Fund in an amount equal to the costs of decontamination and decommissioning that have been recovered during such fiscal year by the Corpora-

tion in its prices and charges established in accordance with section 1508 for products, materials, and services.

"SEC. 1703. PERFORMANCE AND DISBURSEMENTS.—

"a. When the Corporation determines that particular property should be decommissioned or decontaminated, or both, or with respect to the Oak Ridge Gaseous Diffusion Plant at such time as the plant is conveyed to the Corporation, the Corporation shall enter into a contract for the performance of such decommissioning and decontamination.

"b. The Corporation shall pay for the costs of such decommissioning and decontamination out of amounts contained within the Fund."

SEC. 10104. TREATMENT OF THE CORPORATION AS BEING PRIVATELY OWNED FOR PURPOSES OF THE APPLICABILITY OF ENVIRONMENTAL AND OCCUPATIONAL SAFETY LAWS.—The United States Enrichment Corporation shall be subject to Federal, State and local environmental laws and the Occupational Safety and Health Act (29 U.S.C. 651-678) to the same extent as is the Department of Energy as of the date of enactment. After four years from the date of enactment of this subtitle, the United States Enrichment Corporation shall become subject to such laws to the same extent as a privately-owned corporation, unless the President determines that additional time is necessary to achieve the purposes of title II of the Atomic Energy Act of 1954, as amended.

SEC. 10105. MISCELLANEOUS PROVISIONS.—(a) **AMENDMENT OF GOVERNMENT CORPORATIONS CONTROL ACT.—**Section 9101(3) of title 31, United States Code (relating to the definition of "wholly-owned Government corporation") is amended by adding at the end the following: "(N) United States Enrichment Corporation."

(b) **OWNERSHIP OF ENRICHMENT PLANTS.—**In subsection 41 a. of the Atomic Energy Act of 1954, as amended, the word "or" appearing before the numeral "(2)" is deleted, a semicolon is substituted for a period at the end of the subsection and the following new paragraph is added: "or (3) are owned by the United States Enrichment Corporation."

(c) **TERMINATION OF AUTHORITY OF THE DEPARTMENT OF ENERGY.—**In subsection 53 c. (1) of the Atomic Energy Act of 1954, as amended, the word "or" is inserted before the word "grant" and the phrase "or through the provision of production or enrichment services" is deleted in both places where it appears in such subsection.

(d) **EXEMPTION FROM DEFENSE NUCLEAR FACILITIES SAFETY BOARD OVERSIGHT.—**The Atomic Energy Act of 1954, as amended, is further amended in section 318(1) by striking the period after "activities" and by adding the following:

"(D) any facility owned by the United States Enrichment Corporation."

(e) **EXEMPTION FROM GRAMM-RUDMAN-HOLLINGS ACT.—**Subsection 905(g)(1) of Title 2, United States Code, is amended to include "United States Enrichment Corporation" at the end thereof.

(f) **REPEAL OF PROHIBITION ON CONSIDERATION OF PRIVATIZATION.—**Section 306 of title III of the Energy and Water Development Appropriations Act, 1988, Public Law 100-202, is repealed.

SEC. 10106. LIMITATION ON EXPENDITURES.—For fiscal year 1991, total expenditures of the United States Enrichment Corporation shall not exceed total receipts.

SEC. 10107. SEVERABILITY.—If any provision of this subtitle, or the application of any provision to any entity, person or circumstance, shall for any reason be adjudged by a court of component jurisdiction to be invalid, the remainder of this title, or the application of the same shall not be thereby affected.

SEC. 10108. EFFECTIVE DATE.—Except as otherwise provided, all provisions of this subtitle shall take effect on the day following the end of the first full fiscal year quarter following the enactment of this title; *Provided, however*, That the Administrator or Acting Administrator of the United States Enrichment Corporation may immediately exercise the management responsibilities and powers of subsection 1501 a. of the Atomic Energy Act of 1954, as amended by this title.

SEC. 10109. PAYMENT OF COST OF TRANSFER.—(a) PAYMENT SUBJECT TO APPROPRIATION.—Notwithstanding section 1401 j. of the Atomic Energy Act of 1954 as amended by section 10103 of this title, any expense incurred by the Secretary or the Corporation in the course of setting up the Corporation or transferring the property or assets of the Department to the Corporation shall be subject to appropriation.

(b) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to pay the costs of setting up the Corporation and transferring the property and assets of the Department to the Corporation under this title.

Subtitle B—Uranium

PART 1—SHORT TITLE, FINDINGS AND PURPOSE, DEFINITIONS

SEC. 10211. SHORT TITLE.—This subtitle may be cited as the "Uranium Security and Tailings Reclamation Act of 1991."

SEC. 10212. FINDINGS AND PURPOSE.—(a) FINDINGS.—The Congress finds for purposes of this subtitle that—

(1) the United States uranium industry has long been recognized as vital to United States energy independence and as essential to United States national security, but has suffered a drastic economic setback, including a 90 per centum reduction in employment, closure of almost all mines and mills, more than a 75 percent drop in production, and a permanent loss of uranium reserves;

(2) during the remainder of this century approximately 20 per centum of United States electricity is expected to be produced from uranium fueled powerplants owned by domestic electric utilities;

(3) the United States has been the leading uranium producing Nation and holds extensive proven reserves of natural uranium that offer the potential for secure sources of future supply;

(4) a variety of economic factors, policies of foreign governments, foreign export practices, the discovery and development of low cost foreign reserves, new Federal regulatory require-

ments, and cancellation of nuclear powerplants have caused most United States producers to close or suspend operations over the past six years and have resulted in the domestic uranium industry being found "not viable" by the Secretary under provisions of the Atomic Energy Act of 1954, as amended;

(5) providing assistance to the domestic uranium industry is essential to—

(A) preclude an undue threat from foreign supply disruptions that could hinder the Nation's common defense and security,

(B) assure an adequate long-term supply of domestic uranium for the Nation's nuclear power program to preclude an undue threat from foreign supply disruptions or price controls, and

(C) aid in the Nation's balance-of-trade payments through foreign sales;

(6) the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901-7942)—

(A) was enacted to provide for the reclamation and regulation of uranium and thorium mill tailings; and

(B) did not provide for a Federal contribution for the reclamation of tailings at uranium and thorium processing sites which were generated pursuant to Federal defense contracts;

(7) the owners or licensees of active uranium and thorium sites and the Federal Government have each benefitted from uranium and thorium produced at the active sites, and it is equitable that they share in the costs of reclamation, decommissioning and other remedial actions at the commingled sites; and,

(8) the creation of an assured system of financing will greatly facilitate and expedite reclamation and remedial actions at active uranium and thorium processing sites.

(b) PURPOSE.—It is the purpose of parts 2 and 3 of this subtitle to—

(1) ensure an adequate long-term supply of domestic uranium for the Nation's common defense and security and for the Nation's nuclear power program;

(2) provide assistance to the domestic uranium industry; and

(3) establish, facilitate, and expedite a comprehensive system for financing reclamation and other remedial action at active uranium and thorium processing sites.

SEC. 10213. DEFINITIONS.—For purposes of this subtitle—

(1) the term "active site" means—

(A) any uranium or thorium processing site, including the mill, containing by-product material for which a license (issued by the Nuclear Regulatory Commission or its predecessor agency under the Atomic Energy Act of 1954, as amended, or by a State as permitted under section 274 of such Act (42 U.S.C. 2021)) for the production at such site of any uranium or thorium derived from ore—

(i) was in effect on January 1, 1978;

(ii) was issued or renewed after January 1, 1978;

or

(iii) for which an application for renewal or issuance was pending on, or after January 1, 1978; and
 (B) any other real property or improvement on such real property that is determined by the Commission to be—

(i) in the vicinity of such site; and

(ii) contaminated with residual by-product material;

(2) the term "byproduct material" has the meaning given such term in section 11e.(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014(e)(2));

(3) the term "civilian nuclear power reactor" means any civilian nuclear powerplant required to be licensed under section 103 or section 104 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2133);

(4) the term "Corporation" means the United States Enrichment Corporation established under section 1202 of Title II of the Atomic Energy Act of 1954, as amended;

(5) the term "Department" means the Department of Energy;

(6) the term "domestic uranium" means any uranium that has been mined in the United States including uranium recovered from uranium deposits in the United States by underground mining, open-pit mining, strip mining, in situ recovery, leaching, and ion recovery, or recovered from phosphoric acid manufactured in the United States;

(7) the term "domestic uranium producer" means a person or entity who produces domestic uranium and who has, to the extent required by State and Federal agencies having jurisdiction, licenses and permits for the operation, decontamination, decommissioning, and reclamation of sites, structures and equipment;

(8) the term "enrichment tails" means uranium in which the quantity of the U-235 isotope has been depleted in the enrichment process;

(9) the term "reclamation, decommissioning, and other remedial action" includes work, including but not limited to disposal work, accomplished in order to comply with all applicable requirements, including but not limited to those established pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, as amended, or where appropriate, with requirements established by a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021). The term shall also include work at an active site prior to the date of enactment of this act accomplished in order to comply with the foregoing requirements;

(10) the term "Secretary" means the Secretary of Energy;

(11) the terms "source material" and "special nuclear material" have the meaning given such terms in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014); and

(12) the term "tailings" means the wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

PART 2—URANIUM REVITALIZATION

SEC. 10221. VOLUNTARY OVERFEED PROGRAM.—(a) **ESTABLISHMENT.**—The Corporation shall establish, for a period of not less than five years commencing at the beginning of fiscal year 1992, a voluntary overfeeding program which shall be made available to the Corporation's enrichment services customers. The term "overfeeding" means the use of uranium in the enrichment process in excess of the amount required at the transactional tails assay.

(b) **FINANCIAL INCENTIVE.**—The Corporation shall encourage its enrichment services customers to participate in the voluntary overfeeding program as provided in this section. Uranium supplied by the enrichment customer shall be used by the Corporation for voluntary overfeeding in the enrichment process to reduce the amount of power required to produce the enriched uranium ordered by the enrichment services customer. The dollar savings resulting from the reduced power requirements shall be credited to the enrichment services customer.

(c) **ADDITIONAL PARTICIPATION.**—In the event an enrichment services customer does not elect to provide uranium for voluntary overfeeding to be used to process its enrichment order, the Corporation shall establish a method for such uranium to be voluntarily supplied by other enrichment services customer(s) which have expressed to the Corporation an interest in participating in such a program and the Corporation shall credit the resulting dollar savings realized from the reduced power requirements to the enrichment services customer(s) providing the uranium.

(d) **USE OF DOMESTIC URANIUM.**—An enrichment services customer providing uranium for voluntary overfeeding shall certify to the Corporation that such uranium is domestic uranium which has been actually produced by a domestic uranium producer after the enactment of this title or domestic uranium actually produced by a domestic uranium producer before the enactment of this title and held by it without sale, transfer or redesignation of the origin of such uranium on a DOE/NRC form 741.

(e) **IMPLEMENTATION.**—Within ninety days of the date of enactment of this title, the Corporation shall establish procedures to implement this program. Such procedures shall include, but not be limited to, delivery, reporting and certification requirements, and provisions for failure to comply with the requirements of the voluntary overfeeding program. The determination of the voluntary overfeeding credit and sufficient data to support such determination shall be available to the Corporation's enrichment services customers and to qualified domestic producers.

SEC. 10222. NATIONAL STRATEGIC URANIUM RESERVE.—There is hereby established the National Strategic Uranium Reserve under the direction and control of the Secretary. The Reserve shall consist of 50,000,000 pounds of natural uranium contained in stockpiles or inventories currently held by the United States for defense purposes. Effective on the date of enactment of this title, use of the Reserve shall be restricted to military purposes and government research. Use of the Department's stockpile of enrichment tails existing on the date of enactment of this title shall be restricted to military purposes.

SEC. 10223. RESPONSIBILITY FOR THE INDUSTRY.—(a) **CONTINUING SECRETARIAL RESPONSIBILITY.**—The Secretary shall have a continuing responsibility for the domestic uranium industry, and shall take any action, which he determines to be appropriate under existing law, to encourage the use of domestic uranium: *Provided, however,* That the Secretary, in fulfilling this responsibility, shall not use any supervisory authority over the Corporation. The Secretary shall report annually to the appropriate committees of Congress on action taken with respect to the domestic uranium industry, including action to promote the export of domestic uranium pursuant to subsection (b).

(b) **ENCOURAGE EXPORT.**—The Department, with the cooperation of the Department of Commerce, the United States Trade Representative and other governmental organizations, shall encourage the export of domestic uranium. Within one hundred and eighty days of the date of enactment of this Act the Secretary shall develop recommendations and implement government programs to promote the export of domestic uranium.

SEC. 10224. GOVERNMENT URANIUM PURCHASES.—(a) **USE OF DOMESTIC URANIUM.**—After the date of enactment of this title, the United States of America, its agencies and instrumentalities, shall only have the authority to enter into contracts or orders for the purchase of uranium which is (1) of domestic origin and (2) is purchased from domestic uranium producers: *Provided,* That this section shall not affect purchases under a contract for delivery of a fixed amount of uranium entered into before the date of enactment of this title.

(b) **TVA EXEMPTION.**—Subsection (a) shall not apply to the Tennessee Valley Authority.

SEC. 10225. SECRETARY'S AUTHORITY TO MAKE REGULATIONS.—The Secretary shall issue appropriate regulations to implement the purposes of this subtitle.

PART 3—REMEDIAL ACTION FOR ACTIVE PROCESSING SITES

SEC. 10231. REMEDIAL ACTION PROGRAM.—(a) **IN GENERAL.**—Except as provided in subsection (b), the costs of decontamination, decommissioning, reclamation, and other remedial action at an active uranium or thorium processing site shall be borne by persons licensed under section 62 or 81 of the Atomic Energy Act of 1954 (42 U.S.C. 2091, 2111) for any activity at such site which results or has resulted in the production of byproduct material.

(b) **REIMBURSEMENT.**—(1) **IN GENERAL.**—The Secretary shall, subject to paragraph (2), reimburse at least annually a licensee described in subsection (a) for such portion of the reclamation, decommissioning and other remedial action costs described in such subsection as are—

(A) determined by the Secretary to be attributable to tailings generated as an incident of sales to the United States; and

(B) incurred by such licensee not later than December 31, 2002.

(2) **AMOUNT.**—

(A) **TO INDIVIDUAL ACTIVE SITE URANIUM LICENSEES.**—The amount of reimbursement paid to any licensee under para-

graph (1) shall be determined by the Secretary in accordance with regulations issued pursuant to section 10232 and shall not exceed an amount equal to \$4.50 multiplied by the dry short tons of tailings located at the site as of the effective date of this subtitle and generated as an incident of sales to the United States.

(B) **TO ALL ACTIVE SITE URANIUM LICENSEES.**—Payments made under paragraph (1) to active site uranium licensees shall not in the aggregate exceed \$270,000,000.

(C) **TO THORIUM LICENSEES.**—Payments made under paragraph (1) to the licensee of the active thorium site shall not exceed \$30,000,000.

(D) **INFLATION ESCALATION INDEX.**—The amounts in subparagraphs (A), (B) and (C) shall be increased annually based upon an inflation index. The Secretary shall determine the appropriate index to apply.

(E) **ADDITIONAL REIMBURSEMENT.**—*Provided however,* That (i) the Secretary shall determine as of July 31, 2005, whether the amount authorized to be appropriated in section 10233, when considered with the \$4.50 per dry short ton limit on reimbursement, exceeds the total cost reimbursable to the licensees of active sites for reclamation, decommissioning and other remedial action; and (ii) if the Secretary determines there is an excess, the Secretary may allow reimbursement in excess of \$4.50 per dry short ton on a pro-rated basis at such sites that reclamation, decommissioning and other remedial action costs for tailings generated as an incident of sales to the United States exceed the \$4.50 per dry short ton limitation.

SEC. 10232. REGULATIONS.—The Secretary shall issue regulations governing reimbursement under section 10231. An active uranium or thorium processing site owner shall apply for reimbursement hereunder by submitting a statement for the amount of reimbursement, together with reasonable documentation in support thereof, to the Secretary. Any such statement for reimbursement, supported by reasonable documentation, shall be approved by the Secretary and reimbursement therefor shall be made in a timely manner subject only to the limitations of section 10231.

SEC. 10233. AUTHORIZATION.—There is authorized to be appropriated for purposes of this part not more than \$300,000,000 increased annually as provided in section 10231 based upon an inflation index as determined by the Secretary.

PART 4—IMPORT OF URANIUM, ENRICHED URANIUM, AND URANIUM ENRICHMENT SERVICES

SEC. 10241. FINDINGS AND PURPOSES.—(a) **FINDINGS.**—The Congress finds that—

(1) the domestic uranium industry and the economic viability of the Federal uranium enrichment enterprise may be threatened by exports of uranium and enriched uranium from non-market economy countries at prices which represent less than the cost of producing uranium or enriching uranium; and

(2) the national security and defense interests of the United States require that appropriate actions be taken to assure that

the nuclear energy industry in the United States does not become unduly dependent on foreign sources of uranium or uranium enrichment services.

(b) **PURPOSES.**—The purposes of this part are to—

(1) determine whether any uranium or enriched uranium is being exported by non-market economy countries at prices which represent less than the cost of producing such commodities; and

(2) provide for appropriate actions to assure the viability of the domestic uranium industry and the Federal uranium enrichment enterprise in order to protect the national security and defense interests of the United States.

SEC. 10242. DEFINITIONS.—For purposes of this part, the term—

(1) “Administrator” means the Administrator of the Energy Information Administration;

(2) “Federal uranium enrichment enterprise” means the uranium enrichment activities of the Department of Energy or the United States Enrichment Corporation; and

(3) “utility regulatory authority” means any State agency or Federal agency that has ratemaking authority with respect to the sale of electric energy by any electric utility or independent power producer, except that for the purposes of this paragraph, the terms “electric utility”, “State agency”, “Federal agency”, and “ratemaking authority” have the same meanings as the terms have under section 3 of the Public Utility Regulatory Policies Act of 1978.

SEC. 10243. UNITED STATES INTERNATIONAL TRADE COMMISSION INVESTIGATION.—(a) **INVESTIGATION.**—Within sixty days after the date of enactment of this part, the United States International Trade Commission shall initiate an investigation to determine—

(1) the quantities of uranium or enriched uranium being exported from non-market economy countries;

(2) the amount and nature of uranium enrichment services being offered by non-market economy countries; and

(3) whether such uranium, enriched uranium or enrichment services are being offered at prices which represent less than the cost of producing such uranium or enriched uranium or providing such uranium enrichment services.

(b) **COOPERATION.**—The Secretary, the Administrator, and the Secretary of Commerce shall cooperate fully with the International Trade Commission in the investigation and shall furnish them all records, analyses and information in their possession regarding the production costs, sales costs and exports of uranium and enriched uranium, or the provision of uranium enrichment services, by non-market economy countries.

(c) **REPORT.**—(1) Within one year after the date of enactment of this part and annually thereafter, the International Trade Commission shall furnish a report containing the results of the investigation and its determination under paragraph (a)(3) to the President, for the use of the Secretary and Secretary of Commerce, and the Congress.

(2) If the International Trade Commission determines that any non-market economy country is exporting uranium or enriched uranium, or providing enrichment services, at prices which repre-

sent less than the cost of production, the President, or his designee, within one hundred and twenty days of receipt of the report from the International Trade Commission, shall transmit to the Congress a report on what actions are being taken by the Federal Government to discourage or end such pricing practices, including the status of any negotiations with such country to end such pricing practices.

(d) **CONFIDENTIALITY.**—The International Trade Commission shall take such steps as, in its judgment, are necessary, including the classification of information, to assure appropriate protection of any confidential information.

SEC. 10244. URANIUM PURCHASE REPORTS.—(a) **ANNUAL REPORTS.**—By January 1 of each year, the owner or operator of any civilian nuclear power reactor shall report to the Secretary, acting through the Administrator, for activities of the previous fiscal year—

(1) the country of origin and the seller of any uranium or enriched uranium purchased or imported into the United States either directly or indirectly by such owner or operator; and

(2) the country of origin and the seller of any enrichment services purchased by such owner or operator.

(b) **CONGRESSIONAL ACCESS.**—The information provided to the Secretary pursuant to this section shall be made available to the Committee on Energy and Natural Resources of the United States Senate and appropriate committees of the United States House of Representatives by March 1 of each year.

(c) **COUNTRY OF ORIGIN.**—For the purposes of this section, the term “country of origin” means,

(1) with respect to uranium, that country where the uranium was mined, or

(2) with respect to enriched uranium, that country where the uranium was mined and enriched; or

(3) with respect to enrichment services, that country where the enrichment services were performed.

SEC. 10245. REGULATORY TREATMENT OF URANIUM PURCHASES.—(a) **ENCOURAGEMENT.**—The Secretary shall encourage States and utility regulatory authorities to take into consideration the achievement of the objectives and purposes of this part, including the national need to avoid dependence on imports, when considering whether to allow the owner or operator of any electric power plant to recover in its rates and charges to customers any cost of purchase of domestic uranium, enriched uranium, or enrichment services from a non-affiliated seller greater than the cost of non-domestic uranium, enriched uranium or enrichment services.

(b) **REPORT.**—Within one year of the date of enactment of this part, and annually thereafter, the Secretary shall report to Congress on his progress in encouraging actions by State regulatory authorities pursuant to subsection (a). Such report shall include detailed information on programs initiated by the Secretary to encourage appropriate State regulatory action and recommendations, if any, on further action that could be taken by the Secretary, other Federal agencies, or the Congress in order to further the purposes of this part.

(c) **DEFINITION OF NON-AFFILIATE.**—As used in this section, a seller is “non-affiliated” if it does not control, and is not controlled by or under common control with the buyer.

SEC. 10246. UNITED STATES PURCHASE OF ENRICHED URANIUM.—

(a) **AUTHORIZATION.**—Subject to the limitations of subsection (b), the Secretary or the United States Enrichment Corporation is authorized to purchase enriched uranium from other sources of enriched uranium at prices below the production costs of the Department of Energy or the Corporation, respectively, if such purchases are necessary to reduce productions costs and maintain competitive prices.

(b) **USE OF URANIUM.**—If enriched uranium purchased by the Secretary or the United States Enrichment Corporation is used to supply enrichment customers, any uranium provided by such customers to the Secretary or the United States Enrichment Corporation as feed material may only be used for rebuilding uranium inventory or for overfeeding purposes.

TITLE XI—NATURAL GAS

SEC. 11101. OPTIONAL CERTIFICATE PROCEDURES.—(a) **CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.**—Section 7 of the Natural Gas Act, (15 U.S.C. 717f) is amended—

(1) by adding a new subparagraph (c)(1)(G) as follows—

“(G) Upon application the Commission shall issue a certificate of public convenience and necessity for the construction, extension and operation of facilities for the transportation or sale of natural gas without requiring a hearing or further proof that the public convenience and necessity would be served by those facilities: *Provided*, That, subject to the provisions of subsection (k) of this section, the requirements of subsections (i) and (j) of this section are met. Such a certificate shall be non-exclusive and non-prejudicial to any other authorization under the Natural Gas Act or the Natural Gas Policy Act of 1978.”;

(2) by adding the following three subsections after subsection

(h)—

“(i) For the purposes of subparagraph (c)(1)(G) of this section—

“(1) The Commission shall issue a certificate of public convenience and necessity only if it finds that the construction, extension and operation of facilities shall not impair any certificate holder’s ability to render adequate service to its customers, and only if, in addition to any other terms the Commission may attach, the following terms and conditions are attached to such certificate to satisfy the following requirements—

“(A) No costs or expenses incurred in relation to the construction, extension and operation of facilities, or the sale of such facilities, covered by a certificate issued pursuant to subparagraph (c)(1)(G) of this section may be included in the rates and charges of any other rate schedule filed with the Commission under this Act or the Natural Gas Policy Act of 1978.

“(B) The holder of a certificate issued pursuant to subparagraph (c)(1)(G) of this section shall not be required to credit any revenues received in relation to providing service under such certificate, or the sale of facilities author-

ized under such certificate, when determining the rates and charges of any other rate schedule filed with the Commission under this Act or the Natural Gas Policy Act of 1978.

"(C) Notwithstanding section 15(a) of this Act, the holder of a certificate issued under subparagraph (c)(1)(G) of this section shall not participate in any proceedings (other than those it may subsequently initiate) for the construction, extension or operation of facilities that would serve the same market served by the facilities authorized by the holder's certificate issued under subparagraph (c)(1)(G) of this section.

"(D) Under such rules and regulations as the Commission may prescribe, the holder of a certificate issued under subparagraph (c)(1)(G) of this section shall file with the Commission within such time and in such form as the Commission may prescribe, and shall keep open in convenient form and place for public inspection, copies of all agreements required to be filed with the Commission pursuant to subsection (j) of this section.

"(E) The holder of a certificate issued under subparagraph (c)(1)(G) of this section shall maintain a separate system of books, accounts and records for the facilities and services authorized under such certificate.

"(2) The Commission shall assure that all agreements between the certificate holder and all persons, including affiliates of the certificate holder, contracting for transportation or sales service utilizing facilities authorized in a certificate issued under subparagraph (c)(1)(G) of this section are negotiated at arms length.

"(3) The Commission shall provide reasonable public notice of the application for the issuance of a certificate of public convenience and necessity pursuant to subparagraph (c)(1)(G) of this section.

"(j) For purposes of subparagraph (c)(1)(G) of this section—

"(1) Not later than sixty days prior to the commencement of transportation or sales service pursuant to a certificate issued under subparagraph (c)(1)(G) of this section, or at such time as the Commission may find necessary and reasonable, the certificate holder shall file with the Commission copies of all agreements between the certificate holder and all persons, including affiliates of the certificate holder, contracting for transportation or sales service utilizing facilities authorized in a certificate issued under subparagraph (c)(1)(G) of this section. Subsequent to the commencement of transportation or sales service utilizing facilities operated under a certificate issued under subparagraph (c)(1)(G) of this section, the certificate holder shall file with the Commission not later than ten days prior to the initiation of any new service utilizing facilities authorized under such certificate a copy of any new or amended agreement entered into by the certificate holder and any person, including any affiliate of the certificate holder, contracting for transportation or sales service utilizing facilities authorized under such certificate. The Commission shall keep and make

available for public inspection all agreements required to be filed with the Commission pursuant to this paragraph.

"(2) The rates, charges, classifications or practices for the transportation or sale of natural gas contained in the agreements filed with the Commission pursuant to paragraph (j)(1) of this section shall be presumed to be just and reasonable. If, however, the Commission, after a hearing held upon the petition of a person who has made a bona-fide offer to enter into a contract, or who has entered into a contract, for the transportation or sale of natural gas utilizing facilities authorized in a certificate issued under subparagraph (c)(1)(G) of this section, finds that the failure to provide a requested rate, charge, classification, or practice in connection with the requested transportation or sale of natural gas through facilities constructed, extended or operated under a certificate issued under subparagraph (c)(1)(G) of this section is unjust, unreasonable, unduly discriminatory or preferential, the Commission, considering all relevant factors, shall determine the rates, charges, classification or practices which are not unjust, unreasonable, unduly discriminatory or preferential to be observed and in force with respect to the transportation or sale of natural gas to be provided to the petitioner, and shall fix the same by order; *Provided*, That the Commission may not order the requested service to the extent that it finds that capacity is not available. Unless the Commission issues a final order on a petition filed pursuant to this paragraph within one hundred and twenty days after it is filed, such petition shall be deemed denied.

"(k) In any case where a certificate providing for construction or extension of facilities under subparagraph (c)(1)(G) of this section is opposed by a local distribution company on grounds that such certificate would result in the displacement of a sale or transportation service being provided by such local distribution company, the Commission shall promptly set the matter for a hearing on the record and shall decide by final order on rehearing issued within 90 days of the filing of such opposition whether such construction or extension of facilities pursuant to the certificate would displace a sale or transportation service being provided by such local distribution company. If the Commission finds that such construction or extension of facilities would result in the displacement of a sale or transportation service being provided by such local distribution company, the application for a certificate of public convenience and necessity filed pursuant to subparagraph (c)(1)(G) of this section shall, at the option of the applicant, be deemed filed for consideration pursuant to subparagraph (c)(1)(A) of this section. For purposes of this subsection, the term "local distribution company" shall have the same meaning as in section 2(17) of the Natural Gas Policy Act of 1978, and a holder of a service area determination under section 7(f) of this Act shall be considered a local distribution company."; and

(3) by adding at the end of subsection (b) the following: "This subsection does not apply to any facility or service certificated pursuant to subparagraph (c)(1)(G) of this section.".

(b) **NON-APPLICABILITY OF NATURAL GAS ACT SECTION 4 PROCEDURES.**—Section 4 of the Natural Gas Act (15 U.S.C. 717c) is amended by adding the following after subsection (e)—

“(f) Subsections (c), (d) and (e) of this section do not apply to the transportation or sale of natural gas through facilities authorized by a certificate of public convenience and necessity issued under section 7(c)(1)(G) of this Act.”.

(c) **NON-APPLICABILITY OF NATURAL GAS ACT SECTION 5 PROCEDURES.**—Section 5(a) of the Natural Gas Act (15 U.S.C. 717d(a)) is amended by adding the following after the period: “This subsection does not apply to any rate, charge, classification or practice by a natural-gas company in connection with the transportation or sale of natural gas through facilities authorized by a certificate issued under section 7(c)(1)(G) of this Act.”.

SEC. 11102. TRANSPORTATION OF NATURAL GAS UNDER THE NGPA.—Section 311 of the Natural Gas Policy Act of 1978 (15 U.S.C. 3371) is amended by—

(a) striking “AUTHORIZATION OF CERTAIN SALES AND TRANSPORTATION ” and inserting in lieu thereof “AUTHORIZATION OF CERTAIN SALES, TRANSPORTATION AND CONSTRUCTION”;

(b) striking “Commission Approval of Transportation” and inserting in lieu thereof “Commission Approval of Transportation and Construction”;

(c) striking paragraph (a)(1), and inserting in lieu thereof the following:

“(1) **INTERSTATE PIPELINES.**—

“(A) **IN GENERAL.**—The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of—

“(i) any intrastate pipeline,

“(ii) any local distribution company, or

“(iii) any other person including the interstate pipeline itself.

“(B) **JUST AND REASONABLE RATES.**—The rates and charges of any interstate pipeline with respect to any transportation authorized under subparagraph (A) shall be just and reasonable (within the meaning of the Natural Gas Act).

“(C) **NONDISCRIMINATORY TRANSPORTATION.**—Any transportation authorized under subparagraph (A) shall not be unjust, unreasonable, unduly discriminatory or preferential (within the meaning of the Natural Gas Act).

“(D) **CONSTRUCTION.**—Upon sixty days notification to the affected State commission, an interstate pipeline may construct facilities for transportation service provided under this subsection: *Provided*, That construction under this subsection shall not occur in the event such construction would result in the displacement of a sale or transportation service being provided by a local distribution company, unless such local distribution company consents thereto. In any case where such construction is opposed by a local distribution company on grounds that such construction would result in the displacement of a sale or transportation service being provided by such local distribution

company, the Commission shall promptly set the matter for hearing on the record and shall decide by a final order on rehearing issued within ninety days of the filing of such opposition whether the construction would displace a sale or transportation service being provided by such local distribution company. If the Commission finds that such construction would result in the displacement of a sale or transportation service being provided by such local distribution company, the interstate pipeline may file an application for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for authority to construct or extend such facilities. Activities authorized under this paragraph are not subject to State regulation. For purposes of this subparagraph, a holder of a service area determination under section 7(f) of the Natural Gas Act shall be considered a local distribution company." and by

(d) striking subparagraph (a)(2)(A), and inserting in lieu thereof the following:

"(A) IN GENERAL.—The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas on behalf of—

"(i) any interstate pipeline,

"(ii) any local distribution company served by an interstate pipeline, or

"(iii) any other person, including the intrastate pipeline itself, in interstate commerce (within the meaning of the Natural Gas Act)."

SEC. 11103. NEPA COMPLIANCE.—(a) MAJOR FEDERAL ACTION.—Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) is amended by adding the following after paragraph (2):

"(3)(A) For purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable environmental laws, the authorization of construction of facilities by issuance of a certificate of public convenience and necessity by the Commission is the only Federal action that may be considered a major Federal action requiring a detailed statement on the environmental impact of the proposed action in connection with the construction or extension of facilities. The Commission may set reasonable time limits for consultation with the other Federal and State agencies and departments which participate in the review of a proposed facility, and may set reasonable time limits for those agencies and departments to complete their review and submit comments to the Commission.

"(B) Where environmental documents are prepared in connection with applications for authority to construct, extend or operate facilities under this Act, the Commission shall permit, at the election of the applicant, a contractor, consultant or other person funded by the applicant to prepare such environmental document. The Commission shall permit the applicant to select a contractor, consultant or other person from among a list of such individuals or companies determined by the Commission to be qualified to do such work. The Commission shall establish the scope of work and procedures to assure that the contractor, consultant or other person has no fi-

nancial or other potential conflict of interest in the outcome of the proceeding. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.

"(C) Where an environmental assessment is prepared in connection with applications for authority to construct, extend or operate facilities under this Act, the Commission shall permit an applicant, or a contractor, consultant or other person selected by the applicant, to prepare such environmental assessment. The Commission shall institute procedures, including pre-application consultations, to advise potential applicants of studies or other information foreseeably required by the Commission. The Commission shall allow the filing of such applicant-prepared environmental assessments as part of the application. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.

"(D) The Commission shall not infer any control or responsibility over nonjurisdictional activities for purposes of carrying out its environmental responsibilities under the National Environmental Policy Act of 1969."

(b) **COMMUNICATIONS WITH THE COMMISSION.**—The Federal Energy Regulatory Commission, within twelve months of the date of enactment of this Act, shall amend its rules governing ex parte communications to clarify that the prohibitions contained in such rules do not apply to communications between the Commission's environmental advisory staff and other Federal and State agencies that are cooperating agencies for purposes of compliance with title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4331-35): *Provided*, That an accurate public record of all such communications shall be kept and made available, and any party to the proceeding with respect to which such communication was made may respond in writing to such communication.

SEC. 11104. RATES AND CHARGES.—(a) **NOTICE OF CHANGES.**—The first and third sentences of section 4(d) of the Natural Gas Act (17 U.S.C. 717c(d)) are amended by striking "thirty days' notice" and inserting in lieu thereof "sixty days' notice".

(b) **JOINT RATES.**—Section 4 of the Natural Gas Act (15 U.S.C. 717c) is amended by adding the following subsection after subsection (f), added by this title—

"(g) Under such rules and regulations as the Commission may prescribe to preclude anticompetitive conduct, natural-gas companies may jointly file with the Commission rates for the sequential transportation of natural gas through their facilities."

(c) **GAS RESEARCH INSTITUTE SURCHARGE.**—

(1) Nothing in this Act amends or modifies the Federal Energy Regulatory Commission's authority to allow recovery, in advance, of expenditures for research, development and demonstration expenses by natural-gas companies for projects in the areas of exploration, production, transmission, distribution and use of natural gas.

(2) The Federal Energy Regulatory Commission is authorized pursuant to section 4 of the Natural Gas Act to allow recovery, in advance, of expenses by natural-gas companies for research, development and demonstration activities by the Gas Research

Institute for projects on the use of natural gas in motor vehicles and on the use of natural gas to control emissions from the combustion of other fuels: *Provided*, That the Commission finds that the benefits, including environmental benefits, to both existing and future ratepayers resulting from such activities exceed all direct costs to both existing and future ratepayers.

(d) REPORTS TO CONGRESS.—

(1) REPORTS BY THE FERC.—Within six months of the date of enactment of this Act, the Federal Energy Regulatory Commission shall report to the Senate Committee on Energy and Natural Resources and the House of Representatives on the following—

(A) NATURAL GAS TRANSPORTATION.—The goals, objectives and results of the Commission's program for open access transportation of natural gas, the schedule for the program's complete implementation, and the Commission's criteria for—

- (i) rate design reform;
- (ii) comparability of service;
- (iii) authorizing pipeline abandonment and defining pipeline service obligation; and
- (iv) treatment of gas purchase contract buyout and buydown costs.

(B) PIPELINE MERCHANT FUNCTION.—The Commission's regulation under the Natural Gas Act (15 U.S.C. 717-17v) of interstate pipeline sale for resale activities (the merchant function) including—

- (i) the implementation of gas inventory charges and the as-billed recovery of producer demand charges; and
- (ii) the criteria for finding that market-based rates for interstate pipeline sales for resale can be deemed to be just and reasonable in circumstances where such sales are made in workably competitive markets, and given such a finding, the criteria for finding that profits and losses occasioned by such sales for resale should not be taken into account in setting the seller's rates for other services.

(C) NATURAL GAS RATEMAKING.—The Commission's criteria for establishing just and reasonable rates under section 4 of the Natural Gas Act—

- (i) where the Commission finds that workable competition exists and comparable third-party transportation exist, including criteria for the establishment of market-based rates;
- (ii) on a basis other than historical cost, including the criteria for incentive rates; and
- (iii) to ensure that all throughput, under both long-term and short-term arrangements, is taken into account in the Commission's determination of used and useful plant for purposes of possible inclusion in rate base.

(e) NATURAL GAS IMPORTS.—

(1) **TRANSFER OF AUTHORITY.**—Within thirty days of the date of enactment of this Act, the Secretary of Energy shall issue an order delegating to the Federal Energy Regulatory Commission authority to administer the provisions of section 3 of the Natural Gas Act (15 U.S.C. 717b).

(2) **NATURAL GAS ACT AMENDMENT.**—Section 3 of the Natural Gas Act (15 U.S.C. 717b) is amended by adding the following at the end of the section: "The Commission shall condition any import authorization pursuant to this section to redress any anti-competitive impacts on United States' natural gas producers including, but not limited to, competitive disparities resulting from different rate designs applied to the pipeline transportation of domestic natural gas and the pipeline transportation of imported natural gas."

(3) **REPORT BY THE DEPARTMENT OF JUSTICE.**—Within six months of the date of enactment of this Act, the Department of Justice, in consultation with the Department of Energy, the Federal Energy Regulatory Commission and the Office of the United States Trade Representative, shall report to the Senate Committee on Energy and Natural Resources and the House of Representatives regarding the authority of the Department of Energy and the Federal Energy Regulatory Commission under applicable law to address and remedy regulatory advantages that may be conferred on imported natural gas.

SEC. 11105. UTILIZATION OF RULEMAKING PROCEDURES.—The first sentence of section 403(c) of the Department of Energy Organization Act (42 U.S.C. 7173(c)) is amended to read as follows: "Any function described in section 402 of this Act which relates to the establishment of rates and charges under the Federal Power Act or to the establishment of rates and charges, the issuance of a certificate of public convenience and necessity, or the abandonment of facilities and services under the Natural Gas Act may be conducted by rulemaking procedures."

SEC. 11106. REVIEW OF COMMISSION ORDERS.—(a) **NATURAL GAS ACT AMENDMENTS.**—

(1) **REHEARING.**—Section 19(a) of the Natural Gas Act (15 U.S.C. 717r(a)) is amended by striking "Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied." and inserting in lieu thereof "Unless the Commission issues a final order on the application for rehearing within sixty days after it is filed, such application shall be deemed denied: *Provided*, That the Commission may, for good cause, extend the period for rehearing an additional ninety days or, in the case of a rulemaking proceeding, an additional one hundred and twenty days."

(2) **COURT REVIEW.**—Section 19(b) of the Natural Gas Act (15 U.S.C. 717r(b)) is amended by striking the first and second sentences and inserting the following in lieu thereof: "Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural gas company to which the order relates is located or has its principal place of business, or

in the United States Court of Appeals for the District of Columbia, by filing in such court, within thirty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. The petition shall set forth specifically the ground or grounds upon which such petition is based. A copy of such petition shall forthwith be transmitted by the clerk of the court to the chairman of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

(b) NATURAL GAS POLICY ACT AMENDMENTS.—

(1) REHEARING.—Section 506(a)(2) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3416(a)(2)) is amended by striking "Unless the Commission acts upon such application for rehearing within thirty days after it is filed, such application shall be deemed to have been denied." and inserting in lieu thereof "Unless the Commission issues a final order on the application for rehearing within sixty days after it is filed, such application shall be deemed denied: *Provided*, That the Commission may, for good cause, extend the period for rehearing an additional ninety days or, in the case of a rulemaking proceeding, an additional one hundred and twenty days."

(2) COURT REVIEW.—Section 506(a)(4) of the Natural Gas Policy Act (15 U.S.C. 3416(a)(4)) is amended by striking the first three sentences and inserting the following in lieu thereof: "Any person who is a party to a proceeding under this Act aggrieved by any final order issued by the Commission in such proceeding may obtain review of such order in the United States Court of Appeals for any circuit in which the party to which such order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. Review shall be obtained by filing a written petition, requesting that such order be modified or set aside in whole or in part, in such Court of Appeals within 30 days after the final action of the Commission on the application for rehearing required under paragraph (2). The petition shall set forth specifically the ground or grounds upon which such petition is based. A copy of such petition shall forthwith be transmitted by the clerk of the court to the chairman of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

(c) FEDERAL POWER ACT AMENDMENTS.—

(1) REHEARING.—Section 313(a) of the Federal Power Act (16 U.S.C. 825l(a)) is amended by striking "Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied." and inserting in lieu thereof "Unless the Commission issues a final order on the application for rehearing within sixty days after it is filed, such application shall be deemed denied: *Provided*, That the Commission may, for good cause,

extend the period for rehearing an additional ninety days or, in the case of a rulemaking proceeding, an additional one hundred and twenty days."

(2) **COURT REVIEW.**—Section 313(b) of the Federal Power Act (16 U.S.C. 825l(b)) is amended by striking the first and second sentences and inserting the following in lieu thereof: "Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within thirty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. The petition shall set forth specifically the ground or grounds upon which such petition is based. A copy of such petition shall forthwith be transmitted by the clerk of the court to the chairman of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

SEC. 11107. LIMITED ANTITRUST RELIEF FOR INDEPENDENT GAS PRODUCER COOPERATIVES.—(a) **DEFINITIONS.**—For the purposes of this section, the term—

(1) "antitrust laws" shall mean the Federal laws defined in section 2(37) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3301(37));

(2) "independent producer" means any person whose natural gas production does not exceed 6 million cubic feet per day: *Provided*, That any person who is an interstate pipeline, intrastate pipeline or local distribution company, as defined in sections 2 (15), (16), and (17) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3301 (15), (16), (17)), or who is an affiliate of such person, as defined in section 2(27) of the Natural Gas Policy Act of 1978, (15 U.S.C. 3301(27)), may not be considered an independent producer for the purposes of this section; and

(3) "independent producer cooperative" shall mean any group of independent producers formed and operated for the purpose of pooling natural gas to enable the cooperative members to bargain effectively for the sale of the natural gas to any person: *Provided*, That such group is not formed or operated for the purpose of raising prices.

(b) **LIMITED ANTITRUST RELIEF.**—

(1) In any civil action under the antitrust laws, the formation or operation of an independent producer cooperative shall not be deemed illegal per se, but shall be illegal only if the anticompetitive effects substantially outweigh the procompetitive effects.

(2) Nothing in this section shall affect the ability of the United States, any State or a private party to obtain an injunction against an independent producer cooperative for conduct

that is proven to be illegal under the standard set forth in paragraph (1).

(c) **SCOPE.**—Nothing in this section shall be construed to make it unlawful for an operator or working interest owner of a well, lease, field, plant or producing unit to market, on behalf of other working interest and royalty owners, the natural gas produced from such well, lease, field, plant or producing unit.

SEC. 11108. VEHICULAR NATURAL GAS JURISDICTION.—(a) **NATURAL GAS ACT AMENDMENTS.**—

(1) Section 1 of the Natural Gas Act (15 U.S.C. 717) is amended to add the following after subsection (c)—

“(d) The provisions of this Act shall not apply to any person by reason of, or with respect to, any sale or transportation of Vehicular Natural Gas if such person is (i) not otherwise a natural-gas company, or (ii) primarily subject to regulation by a State commission, whether or not such State commission has, or is exercising, jurisdiction over the sale, sale for resale, or transportation of Vehicular Natural Gas.”.

(2) Section 2 of the Natural Gas Act (15 U.S.C. 717a) is amended to add the following after subsection (9)—

“(10) ‘Vehicular Natural Gas’ means natural gas that is ultimately used as a fuel in a motor vehicle.”.

(b) **STATE LAWS AND REGULATIONS.**—The transportation of natural gas in closed containers, or the sale of natural gas, by any person who is not otherwise a public utility to any person for use by such person as a fuel in a vehicle shall not be deemed to be a transportation or sale of natural gas within the meaning of any State law, regulation or order in effect prior to January 1, 1989. The provisions of this section shall not apply to any State law, regulation or order that protects the public safety.

(c) **NON-APPLICABILITY OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.**—

(1) A company shall not be considered to be a gas utility company under section 2(a)(4) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79b(a)(4)) (“Act”) solely because it owns or operates facilities used for the distribution at retail of vehicular natural gas.

(2) Notwithstanding section 11(b)(1) of the Act (15 U.S.C. 79k(b)(1)), a company registered under such Act solely by reason of direct or indirect ownership of voting securities of one or more gas utility companies, or any subsidiary of such company, may acquire or retain, in any geographic area, any interest in any company that is not a public utility company and which, as a primary business, is involved in the sale of vehicular natural gas or the manufacture, sale, installation, servicing, or financing of equipment related to the sale or consumption of vehicular natural gas.

(3) The sale or transportation of vehicular natural gas by a company, or any subsidiary of such company, shall not be taken into consideration in determining whether under section 3 of the Act (15 U.S.C. 79c) such company is exempt from registration.

(4) “Vehicular natural gas” means natural or manufactured gas that is ultimately used as a fuel in a motor vehicle.

SEC. 11109. STREAMLINED CERTIFICATE PROCEDURES.—(a) **UNOPPOSED APPLICATIONS.**—Section 7(c)(1) of the Natural Gas Act (15 U.S.C. 717f(c)(1)) is amended by—

- (1) redesignating subparagraph (B) as subparagraph (C); and
- (2) inserting after subparagraph (A) the following new subparagraph:

“(B) In any case not described in the proviso of subparagraph (A), the Commission shall file notice in the Federal Register of the proposed certificate of public convenience and necessity as soon as the required information in connection therewith has been received by the Commission. If no party has filed a protest or objection in response to such notice within sixty days after publication of such notice, the certificate of public convenience and necessity shall be deemed to be issued: *Provided*, That notwithstanding the filing of a protest or objection a certificate shall be deemed issued if all protests and objections are withdrawn.”

(b) **EXPEDITED PROCEDURE FOR PROTESTS.**—Within ninety days of the date of enactment of this Act, the Commission shall institute a rulemaking to establish a procedure for dealing expeditiously with protests which do not raise material issues of fact necessitating an evidentiary hearing.

(c) **CERTIFICATE NOT REQUIRED FOR REPLACEMENT FACILITIES.**—Section 7(c)(1) of the Natural Gas Act (15 U.S.C. 717f(c)(1)) is amended by adding at the end the following new subparagraph:

“(D) The term ‘facilities’ as used in this subsection shall exclude facilities which constitute the replacement or repair of existing facilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable, provided (1) that such replacement or repair does not result in a reduction or abandonment of service by means of such facilities, (2) that such replacement or repair has substantially equivalent designed delivery capacity as the particular facilities being replaced or repaired, and (3) that the cost of such replacement or repair shall not exceed \$20,000,000 per project, as adjusted pursuant to the Implicit Price Deflator for GNP. Nothing herein shall preclude a natural-gas company from repairing or replacing facilities as may be necessary to meet the requirements of the Natural Gas Pipeline Safety Act of 1968.”

(d) **CONCLUSIVE EVIDENCE OF NEED.**—Section 7(c)(1) of the Natural Gas Act (15 U.S.C. 717f(c)(1)) is amended by adding at the end thereof the following new subparagraph:

“(E) In such hearing under subparagraph (C), proof of binding contractual commitments by bona fide shippers for firm natural gas service to be rendered utilizing the facilities proposed to be constructed or extended shall be conclusive evidence of the need for such proposed service and facilities, and shall be sufficient to dismiss any claim of mutual exclusivity by another applicant.”

(e) **PHASED CERTIFICATE PROCEDURES.**—Section 7(c)(1) of the Natural Gas Act (15 U.S.C. 717f(c)(1)) is amended by adding at the end thereof the following new subparagraph:

"(F) In such hearing under subparagraph (C), the Commission, where appropriate, may phase its consideration of issues raised in connection with the application and may issue an initial order containing preliminary findings with respect to such issues. Notwithstanding the preliminary findings in such initial order, the issuance of a certificate of public convenience and necessity will be subject to a final order based upon the complete record of the hearing under subparagraph (C)."

SEC. 11110. GAS DELIVERY INTERCONNECTION.—Section 7(a) of the Natural Gas Act (15 U.S.C. 717f(a)) is amended by—

(a) redesignating subsection (a) as paragraph (a)(1); and

(b) inserting at the end the following new paragraph—

"(2) Upon the petition of any person, the Commission by order may direct an interstate pipeline as defined in section (2)(15) of the Natural Gas Policy Act of 1978, for the sole purpose of receiving natural gas from the petitioner, to establish, at petitioner's expense, and upon such reasonable terms as the Commission may prescribe, physical connection of the interstate pipeline's transportation facilities with the petitioner's production or gathering facilities, the petitioner's intrastate pipeline as defined in section 2(16) of the Natural Gas Policy Act of 1978 (limited to the production area as defined by the Commission), or the petitioner's pipeline certificated pursuant to subparagraph (c)(1)(G) of this section (limited to the production area as defined by the Commission): *Provided*, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel an interstate pipeline to establish physical connection when to do so would impair its ability to render adequate service to its customers."

SEC. 11111. DEREGULATION OF PIPELINE SALES OF NATURAL GAS.—Section 4 of the Natural Gas Act (15 U.S.C. 717c) is amended by adding the following after subsection (g), as added by this title—

"(h) After a hearing held upon the application of a natural-gas company, if the Commission finds that the natural-gas company provides transportation for natural gas owned by any other person comparable to the transportation provided by the natural-gas company for natural gas that it sells for resale and finds that the market that the natural-gas company is authorized to serve is competitive, the Commission may issue an order finding that the natural gas cost component of rates and charges made, demanded, or received by the natural-gas company for the sale for resale of natural gas are exempt from the jurisdiction of the Commission under this Act."

SEC. 11112. COMMISSION POLICY MAKING.—Section 401 of the Department of Energy Organization Act (42 U.S.C. 7171) is amended by adding the following after subsection (j)—

"(k) For the purposes of this Act or any other Act, discussions by all members of the Commission on matters of general policy shall not be considered a meeting."

TITLE XII—OUTER CONTINENTAL SHELF

SEC. 12101. COASTAL STATE AND COMMUNITY OUTER CONTINENTAL SHELF IMPACT ASSISTANCE.—The Outer Continental Shelf Lands Act (43 U.S.C. 1331-1356) is amended by designating the existing provisions as title I and adding a new title II at the end thereof as follows:

“SEC. 201. SHORT TITLE.

“This title may be cited as the ‘Coastal State and Community Outer Continental Shelf Impact Assistance Act’.

“SEC. 202. DEFINITIONS.

“For purposes of this title the term—

“(1) ‘coastal State’ means any State of the United States bordering on the Atlantic Ocean, the Pacific Ocean, the Arctic Ocean, or the Gulf of Mexico;

“(2) ‘coast line’ has the meaning given such term under the Submerged Lands Act (43 U.S.C. 1301 et seq.);

“(3) ‘Secretary’ means the Secretary of the Interior; and

“(4) ‘new revenues’ means:

“(A) all bonuses paid as a result of lease sales conducted pursuant to the Outer Continental Shelf Lands Act on or after February 5, 1991;

“(B) all rents and other moneys other than royalties payable to the Secretary on or after February 5, 1991, related to a lease issued pursuant to the Outer Continental Shelf Lands Act; and

“(C) all royalties attributable to a well or mining operation from which production commenced on or after February 5, 1991, and payable to the Secretary under the Outer Continental Shelf Lands Act;

plus interest thereon.

“SEC. 203. COASTAL STATE AND COMMUNITY OUTER CONTINENTAL SHELF IMPACT ASSISTANCE FUND.

“(a) **ESTABLISHMENT.**—There is established an interest bearing special account in the Treasury of the United States to be known as the Coastal State and Community Outer Continental Shelf Impact Assistance Fund (hereinafter in this Act referred to as “the Fund”). All payments made by the Secretary to carry out the provisions of this title shall be paid from the Fund, only to the extent provided for in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this title shall be kept on deposit or invested in obligations of, or guaranteed by, the United States. The Fund shall be available to the Secretary without fiscal year limitation as a special account for the purposes of carrying out this title.

“(b) **PAYMENTS TO FUND.**—Beginning in fiscal year 1992, the Secretary shall pay into the Fund not later than sixty days after the end of the preceding fiscal year, an amount equal to 37.5 per centum of all new revenues, as defined herein, derived during the preceding fiscal year which are attributable to an Outer Continental Shelf lease any part of which is within 200 geographical miles of the coast line.

"SEC. 204. DISPOSITION OF FUND.

"(a) STATE IMPACT ASSISTANCE.—(1) Subject to appropriation, the Secretary shall transmit to the coastal State annually the revenues payable to such coastal State pursuant to this title, plus interest thereon.

"(2) Subject to paragraph (3), the amounts to be paid to coastal States under this subsection shall be, with respect to any such State for any fiscal year, the sum of the amounts calculated, with respect to such State, pursuant to subparagraphs (A), (B), and (C):

"(A) An amount which bears, to one-half of the amount appropriated for such fiscal year, the same ratio that the amount of Outer Continental Shelf acreage which is adjacent to such state and which is newly leased by the Federal Government in the immediately preceding fiscal year bears to the total amount of Outer Continental Shelf acreage which is newly leased by the Federal Government in such preceding year.

"(B) An amount which bears, to one-quarter of the amount appropriated for such fiscal year, the same ratio that the volume of oil and natural gas produced in the immediately preceding fiscal year from the Outer Continental Shelf acreage which is adjacent to such state and which is leased by the Federal Government bears to the total volume of oil and natural gas produced in such year from all of the Outer Continental Shelf acreage which is leased by the Federal Government.

"(C) An amount which bears, to one-quarter of the amount appropriated for such fiscal year, the same ratio that the volume of oil and natural gas produced from Outer Continental Shelf acreage leased by the Federal Government which is first landed in such state in the immediately preceding fiscal year bears to the total volume of oil and natural gas produced from all Outer Continental Shelf acreage leased by the Federal Government which is first landed in all of the coastal States in such year.

"(3)(A)(i) After making the calculations required under paragraph (2) for any fiscal year, the Secretary shall—

"(I) with respect to any coastal State which, based on such calculations, would receive an amount which is less than 2 per centum of the amount appropriated for such fiscal year, increase the amount payable to such coastal State to 2 per centum of such appropriated amount; and

"(II) with respect to any coastal State which, in such fiscal year, would not receive a payment under paragraph (2), make a payment to such coastal State in an amount equal to 2 per centum of the total amount appropriated for making payments to all States under paragraph (2) in such fiscal year if any other coastal State in the same region will receive a payment under such paragraph in fiscal year, except that a coastal State shall not receive a payment under this clause unless the Secretary determines that it is being or will be impacted by activities conducted pursuant to a lease issued pursuant to the Outer Continental Shelf Lands Act.

"(ii) For purposes of this subparagraph—

"(I) the States of Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New

York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia (the Atlantic Coastal States) shall constitute one 'region';

"(II) the States of Alabama, Florida, Louisiana, Mississippi, and Texas (the Gulf Coastal States) shall constitute one 'region';

"(III) the States of California, Hawaii, Oregon, and Washington (the Pacific Coastal States) shall constitute one 'region'; and

"(IV) the State of Alaska shall constitute one 'region'.

"(B) If, after the calculations required under subparagraph (A), the total amount of funds appropriated for making payments to coastal States in any fiscal year pursuant to this subsection is less than the total amount of payments payable to all coastal States in such fiscal year, there shall be deducted from the amount payable to each coastal State which will receive more than 2 per centum of the amount of funds so appropriated an amount equal to the product of—

"(i) the amount by which the total amount of payments payable to all coastal States in such fiscal year exceeds the total amount of funds appropriated for making such payments; multiplied by

"(ii) a fraction, the numerator of which is the amount of payments payable to such coastal State in such fiscal year reduced by an amount equal to 2 per centum of the total amount appropriated for such fiscal year and the denominator of which is the total amount of payments payable to coastal States which, in such fiscal year, will receive more than 2 per centum of the amount of funds so appropriated, reduced by an amount equal to the product of 2 per centum of the total amount appropriated for such fiscal year multiplied by the number of such coastal States.

"(C)(i) If, after the calculations required under subparagraph (B) for any fiscal year, any coastal State would receive an amount which is greater than 37.5 per centum of the amount appropriated for such fiscal year, the Secretary shall reduce the amount payable to such coastal State to 37.5 per centum of such appropriated amount.

"(ii) Any amount not payable to a coastal State in a fiscal year due to a reduction under clause (i) shall be payable proportionately to all coastal States which are to receive more than 2 per centum and less than 37.5 per centum of the amount appropriated for such fiscal year, except that in no event shall any coastal State receive more than an additional 3 per centum of such appropriated amount under this clause.

"(iii) For purposes of this subparagraph, the term "payable proportionately" means payment in any fiscal year in accordance with the provisions of paragraph (2), except that in making calculations under such paragraph the Secretary shall only include those coastal States which are to receive more than 2 per centum and less than 37.5 per centum of the amount appropriated for such fiscal year.

"(4) For purposes of making calculations under paragraph (2), Outer Continental Shelf acreage is adjacent to a particular coastal

State if such acreage lies on that State's side of the extended lateral seaward boundaries of such State. The extended lateral seaward boundaries of a coastal State shall be determined as follows:

"(A) If lateral seaward boundaries have been clearly defined or fixed by an interstate compact, agreement, or judicial decision (if entered into, agreed to, or issued before the date of the enactment of this paragraph), such boundaries shall be extended on the basis of the principles of delimitation used to so define or fix them in such compact, agreement, or decision.

"(B) If no lateral seaward boundaries, or any portion thereof, have been clearly defined or fixed by an interstate compact, agreement, or judicial decision, lateral seaward boundaries shall be determined according to the applicable principles of law, including the principles of the Convention on the Territorial Sea and the Contiguous Zone, and extended on the basis of such principles.

"(C) If, after the date of enactment of this paragraph, two or more coastal States enter into or amend an interstate compact or agreement in order to clearly define or fix lateral seaward boundaries, such boundaries shall thereafter be extended on the basis of the principles of delimitation used to so define or fix them in such compact or agreement.

"(b) COUNTY AND COMMUNITY IMPACT ASSISTANCE.—The revenues paid by the Secretary to a coastal State under subsection (a) shall be used by such State and its subdivisions, as the legislature of the State may direct, giving priority to those subdivisions of the State socially, environmentally, or economically impacted by development of minerals on the Outer Continental Shelf, for (i) planning, (ii) construction and maintenance of public facilities, (iii) environmental activities, and (iv) provision of public services.

"SEC. 205. RELATIONSHIP TO OTHER LAW.

"The payment of funds pursuant to this title shall be in addition to any payments made to a State under any other provision of this Act or any other provision of law."

SEC. 12102. REPORT ON THE AVAILABILITY OF THE OUTER CONTINENTAL SHELF FOR LEASING.—(a) REPORT TO CONGRESS.—Within six months after the date of enactment of this Act, the President shall submit a report to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate containing the President's recommendations and findings regarding the availability of areas of the Outer Continental Shelf for oil and gas leasing, development and production.

(b) REPORT CONTENTS.—Such report shall contain but not be limited to the following findings and information:

(1) oil and gas production potential on the Outer Continental Shelf by region;

(2) historical data regarding oil and gas production on the Outer Continental Shelf by region;

(3) the extent to which production from areas of the Outer Continental Shelf currently under (A) moratoria as a result of the decision of the President announced June 26, 1990, or (B) legislative moratoria would reduce United States dependence

on oil from the Middle East and on oil produced by members of the Organization of Petroleum Exporting Countries;

(4) a comparison by Outer Continental Shelf region and on a national basis of the number of oil spills and amount of spilled oil resulting from Outer Continental Shelf production and the number of oil spills and amount of spilled oil caused by vessels transporting imported oil to the United States;

(5) an estimate by region and on a national basis of the net change in the oil spill risk as imports of oil decrease in response to production from new leases on the Outer Continental Shelf;

(6) at least one proposal for an alternative to the current Outer Continental Shelf process that would provide for a staged requirement for environmental information and public comment thereon at critical points in the leasing process and during the post-leasing exploration and development phases. Any such proposal shall assume that a potential lessee will be offered full rights to exploration and development at the time of lease sale subject to cancellation. Any proposal under this paragraph shall specify the criteria to be used for cancellation based on environmental considerations;

(7) an analysis of the compensation criteria for OCS lease cancellation under current law, recommended changes thereto, and recommendations for any changes in such compensation under any proposal under paragraph (6); and

(8) identification of gas prone areas under administrative or legislative moratoria.

TITLE XIII—RESEARCH, DEVELOPMENT, DEMONSTRATION AND COMMERCIALIZATION ACTIVITIES

SEC. 13101. ENERGY RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIALIZATION PRIORITIES.—The Secretary shall establish priorities for research, development, demonstration, and commercialization activities. These priorities shall include consideration of the following criteria—

(1) the potential to increase the Nation's energy independence and thus reduce reliance on imported oil;

(2) the projected cost-effectiveness of the energy or energy efficiency resource to be produced or saved, including an evaluation of the likelihood of the activities contributing to the achievement of commercialization of new energy technologies;

(3) the comparative environmental and public health impacts of the energy to be produced or saved by the specific activities;

(4) the national security impact of the energy produced or saved, including its projected contribution to the reduction of oil imports and to the diversity of the domestic energy resource mix;

(5) the obstacles inherent in private industry's development of new energy technologies and steps necessary for establishing or maintaining technological leadership in the area of energy and energy efficiency resource technologies, including, but not limited to, solar, fuel cells, fusion, superconductivity, nuclear

fission, electric power, clean coal technologies, oil shale, oil and natural gas recovery and utilization, and hydrogen;

(6) the contribution of a given activity to fundamental scientific knowledge;

(7) the anticipated impact of the results of activities on targeted industries and industrial and manufacturing processes; and

(8) the contribution to United States competitiveness.

SEC. 13102. MANAGEMENT PLAN.—(a) **PLAN PREPARATION.**—The Secretary, in consultation with the Energy Advisory Board to the Secretary, shall prepare a management plan for the conduct of research, development, demonstration, and commercialization of energy technologies that is consistent with the purposes of this Act and guided by the priorities set forth in section 13101.

(b) **PROPOSALS.**—The management plan under subsection (a) shall contain proposals for—

(1) investigation of promising energy and energy efficiency resource technologies that have been identified as potentially significant future contributors to national energy security;

(2) development of contingency energy and energy efficiency resource technologies that have the potential to reduce energy supply vulnerability, and to minimize adverse impacts on the environment, the global climate, and the economy; and

(3) creation of opportunities for export of energy and energy efficiency resource technologies from the United States that can enhance the Nation's competitiveness;

(c) **PLAN SUBMISSION.**—Within one year after the date of enactment of this section, the Secretary shall submit the first management plan under this section to Congress. Thereafter, the Secretary shall submit a revised management plan biennially at the time of submittal of the President's annual budget submission to the Congress.

SEC. 13103. NATURAL GAS END-USE TECHNOLOGIES.—(a) **PROGRAM.**—The Secretary shall carry out a program to promote the development and commercialization of new and advanced natural gas utilization technologies including, but not limited to, the following areas—

(1) stationary source emissions control and efficiency improvements including combustion systems, industrial processes, natural gas heating and cooling, cogeneration, and cofiring natural gas with coal and waste fuels;

(2) natural gas storage including increased deliverability from existing gas storage facilities and new capabilities for storage near demand centers and on-site storage at major energy consuming facilities;

(3) transportation fuel alternatives and emissions controls including natural gas vehicle commercialization and infrastructure development (including home and commercial compressors for natural gas vehicles) and advanced engines and propulsion concepts; and

(4) electrochemical energy conversion including the commercialization of molten carbonate fuel cells and phosphoric acid fuel cells and the development of advanced natural gas-fired fuel cell technologies.

(b) **COOPERATIVE AGREEMENTS.**—The Secretary shall solicit proposals and may enter into cooperative agreements under this section.

(c) **COST-SHARING.**—(1) The Secretary shall require at least 50 per centum of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13104. NATURAL GAS SUPPLY ENHANCEMENT.—(a) **PROGRAM.**—The Secretary shall carry out a program of research, development and demonstration to increase the recoverable natural gas resource base including, but not limited to, the following areas—

(1) more intensive recovery of natural gas from discovered conventional resources;

(2) economic recovery of unconventional natural gas resources, including gas from tight sands, eastern shales, and gas from less permeable formations, coal-bed methane and geopressurized reservoirs;

(3) surface gasification of coal; and

(4) recovery of methane from biofuels including municipal solid waste.

(b) **COOPERATIVE AGREEMENTS.**—The Secretary shall solicit proposals and may enter into cooperative agreements under this section.

(c) **COST-SHARING.**—(1) The Secretary shall require at least 50 per centum of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13105. HIGH EFFICIENCY HEAT ENGINES.—(a) **PROGRAM.**—The Secretary shall carry out a program of research, development, demonstration, and commercialization on high efficiency heat engines, emphasizing advanced gas turbine cycles, and the incorporation of energy efficient materials in advanced gas turbine cycles for high efficiency electric and automotive power generation, such as—

(1) advanced combined cycle turbines;

- (2) steam-injected gas turbines; and
- (3) intercooled steam-injected gas turbines.

(b) **JOINT VENTURES.**—The Secretary may enter into joint ventures with appropriate parties to construct and demonstrate high efficiency heat engines.

(c) **AUTHORIZATION.**—There is authorized to be appropriated not more than \$25,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13106. OIL SHALE RESEARCH AND DEVELOPMENT.—(a) **PROGRAM.**—(1) The Secretary shall carry out a research and development program on oil shale that includes applied research on eastern oil shale, in cooperation with universities and the private sector, that may have the potential to decrease United States dependence on energy imports.

(2) As part of the program authorized in this section, the Secretary shall consider the potential benefits of including in that program applied research carried out in cooperation with universities and other private sector entities that are now engaged in research on eastern oil shale retorting and associated processes.

(b) **COST-SHARING.**—The program carried out under this section shall be cost-shared with universities and the private sector to the maximum extent possible.

(c) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13107. WESTERN OIL SHALE RESEARCH AND DEVELOPMENT.—(a) **PROGRAM.**—The Secretary shall carry out a program of research on extracting oil from western oil shales that includes, if appropriate, establishment and utilization of at least one field testing center for the purpose of testing, evaluating, and developing improvements in oil shale technology at the field test level. In establishing such a center, the Secretary shall consider sites with existing oil shale mining and processing infrastructure and facilities.

(b) **COST-SHARING.**—(1) The Secretary shall require at least 50 per centum of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(c) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13108. HIGH-TEMPERATURE SUPERCONDUCTING ELECTRIC POWER SYSTEM.—(a) **PROGRAM.**—The Secretary shall carry out a program of research, development, and demonstration of a high-temperature superconducting electric power system. Elements of the program shall include, but are not limited to, the following—

- (1) the development of prototypes, where appropriate, of the major elements of a superconducting electric power system,

such as motors, generators, transmission lines, transformers, and magnetic energy storage systems;

(2) development of prototypes based on high-temperature superconducting wire and refrigeration systems using cryocoolers or liquid cryogens such as nitrogen, with such prototype wires operating at temperatures between 20 degrees Kelvin and 77 degrees Kelvin (-423 degrees Fahrenheit and -320 degrees Fahrenheit), or higher if material developments permit; and

(3) development of prototypes that are of sufficient operational capabilities to demonstrate the technology application and facilitate dual-use application in both the civilian commercial sector and the defense sector.

(b) **COOPERATIVE AGREEMENTS.**—In order to carry out the programs under this section, the Secretary shall solicit proposals and may enter into cooperative agreements under this section. The Secretary is also encouraged to expedite government, industry, and university collaborative agreements under existing mechanisms at the Department of Energy, in coordination with other Federal agencies.

(c) **COST-SHARING.**—(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13109. RENEWABLE ENERGY RESEARCH AND DEVELOPMENT PROGRAMS.—Section 4(c) of the Renewable Energy and Energy Efficiency Technology Competitiveness Act (Public Law 101-218) is amended by striking all after the first paragraph and inserting in lieu thereof the following:

“(1) such sums as may be necessary for fiscal year 1992;

“(2) such sums as may be necessary for fiscal year 1993; and

“(3) such sums as may be necessary for fiscal year 1994.

“Each of the President’s annual budget requests submitted to Congress after the date of enactment of this Act shall include as separate line items each of the categories of renewable energy programs described in this subsection.”.

SEC. 13110. ENERGY EFFICIENCY RESEARCH AND DEVELOPMENT PROGRAMS.—Section 5 of the Renewable Energy and Energy Efficiency Technology Competitiveness Act (Public Law 101-218) is amended by striking all after the first paragraph and inserting in lieu thereof the following:

“(1) such sums as may be necessary for fiscal year 1992;

“(2) such sums as may be necessary for fiscal year 1993; and

“(3) such sums as may be necessary for fiscal year 1994.”.

SEC. 13111. NATURAL GAS AND ELECTRIC HEATING AND COOLING TECHNOLOGIES.—(a) **PROGRAM.**—(1) The Secretary shall expand the program of research, development, and demonstration for natural gas and electric heating and cooling technologies for residential and commercial buildings.

(2) The natural gas heating and cooling program shall increase research on thermally-activated heat pumps including absorption heat pumps and engine-driven heat pumps.

(3) The electric heating and cooling program shall increase research on—

(A) advanced heat pumps;

(B) thermal storage; and

(C) advanced electrically driven HVAC (heating, ventilating, and air conditioning) and refrigeration systems that utilize replacements for chlorofluorocarbons, including HCFC-22.

(b) **COST-SHARING.**—(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(c) **AUTHORIZATION.**—There is authorized to be appropriated not more than \$15,000,000 for each of the fiscal years 1992, 1993, and 1994 for purposes of this section in addition to current authorizations.

SEC. 13112. FUSION.—(a) **PROGRAM.**—The Secretary shall carry out a research, development, and demonstration program on fusion energy that is structured in a way that will lead to commercial demonstration of the technological feasibility of fusion energy for the production of electricity after the year 2010.

(b) **COMPREHENSIVE MANAGEMENT PLAN.**—(1) Within 180 days after the date of enactment of this section, the Secretary shall prepare a comprehensive management plan for research, development, and demonstration of fusion energy, including milestones and schedules for technology development and estimates of budget and program management resource requirements.

(2) As part of the plan required under paragraph (1), the Secretary shall evaluate the status of international fusion programs and evaluate whether the Federal Government should make efforts to strengthen existing international cooperative agreements in fusion energy or enter into new cooperative agreements to accomplish the purposes of this section.

(3) The plan shall also evaluate to what extent university or private sector participation is appropriate or necessary in order to carry out the purposes of this section.

(c) **COST-SHARING.**—(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services,

equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13113. ELECTRIC VEHICLE, ELECTRIC-HYBRID VEHICLE, AND ASSOCIATED EQUIPMENT RESEARCH AND DEVELOPMENT.—(a) **GENERAL.**—The Secretary shall conduct, pursuant to the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901-5920), a research and development program on electric vehicles, electric-hybrid vehicles, and associated equipment. Such program shall be conducted in cooperation with the electric utility industry, the automobile industry, battery manufacturers, and such other persons as the Secretary considers appropriate.

(b) **COOPERATIVE AGREEMENTS.**—The Secretary, consistent with the comprehensive plan under subsection (c), may enter into cooperative agreements to conduct research and development projects with industry in such areas of technology development as—

(1) high efficiency electric power trains, including advanced motors, motor controllers, and hybrid power trains for electric vehicle range improvement and light-weight body structures for electric vehicle weight reduction; and

(2) advanced batteries with high energy density and power density, and improved range or recharging cycles for a given unit weight for electric vehicle application.

(c) **COMPREHENSIVE PLAN.**—(1) The Secretary shall prepare a comprehensive five-year program plan for carrying out the purposes of this section. Such program plan shall be updated annually for a period of not less than ten years after the date of enactment of this Act.

(2) The program plan under paragraph (1) shall be prepared in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Secretary of Commerce, the heads of other appropriate Federal agencies, representatives of the electric utility industry, electric vehicle and electric-hybrid vehicle manufacturers, the United States automobile industry, and such other persons as the Secretary deems appropriate.

(3) The comprehensive plan shall include—

(A) a prioritization of research areas critical to the commercialization of electric vehicles and electric-hybrid vehicles, including advanced battery technology;

(B) the program elements, management structure, and activities, including program responsibilities of individual agencies and departments;

(C) the program strategies, including technical milestones to be achieved toward specific goals during each fiscal year of the comprehensive plan for all major activities and projects;

(D) the estimated costs of individual program elements, including estimated costs for each of the fiscal years of the plan for each of the participating agencies or departments;

(E) a description of the methods of technology transfer;

(F) the proposed participation by non-Federal entities in the planning and implementation of the plan; and

(G) such other information as the Secretary deems appropriate.

(4) Not later than one hundred and eighty days after the date of enactment of this Act, the Secretary shall transmit the comprehensive program plan to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such plan shall be updated annually as specified in subsection (c)(1).

(d) SOLICITATION OF PROPOSALS.—(1) Within one year after the date of enactment of this Act, the Secretary shall solicit proposals for cooperative agreements for research and development under subsection (b).

(2) Thereafter, the Secretary may solicit additional proposals for cooperative agreements under subsection (b) if, in the judgment of the Secretary, such cooperative agreements could contribute to the development of electric vehicles or electric-hybrid vehicles and associated equipment.

(e) COST-SHARING.—(1) The Secretary shall require at least 50 per centum of the costs directly and specifically related to any cooperative agreement under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(f) DEPLOYMENT.—(1) The Secretary shall conduct a program designed to accelerate deployment of advanced energy storage systems, including advanced battery technologies, for use with electric vehicles and electric-hybrid vehicles.

(2) In carrying out the program authorized by this subsection, the Secretary shall—

(A) undertake an inventory and assessment of advanced energy storage systems, including advanced battery technologies, electric vehicle technologies and electric-hybrid technologies and their commercial capability; and

(B) develop a Federal industry information exchange program to improve the deployment or use of such technologies. The information exchange program may consist of workshops, publications, conferences, and a data base for use by the public and private sectors.

(g) COMPLIANCE WITH EXISTING LAW.—Nothing in this section shall be deemed to convey to any person, partnership, corporation, or other entity immunity from civil or criminal liability under any antitrust law or to create defenses to actions under any antitrust

law. As used in this section, "antitrust laws" means those Acts set forth in section 1 of the Clayton Act (15 U.S.C. 12), as amended.

(h) **DEFINITIONS.**—For purposes of this section, the term—

(1) "advanced battery" means an electro-chemical storage device, including fuel cells, and associated technology necessary to charge, discharge, recharge or regenerate such electro-chemical storage device, for use as a source of power for an electric vehicle, an electric-hybrid vehicles, and any other associated equipment of an electric vehicle;

(2) "associated equipment" means that equipment necessary for the regeneration, refueling or recharging of batteries or other forms of electric energy used to power an electric vehicle and, in the case of electric-hybrid vehicles, that equipment necessary for the application or use of the nonelectric source of power in such vehicles;

(3) "electric vehicle" means a vehicle powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other source of electric current; and

(4) "electric-hybrid vehicle" means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other source of electric current and also relies on a nonelectrical source of power.

(i) **AUTHORIZATION.**—There is authorized to be appropriated to the Secretary (in addition to any amounts made available pursuant to other law) for each of the fiscal years 1992, 1993, and 1994 such sums as may be necessary to carry out the purposes of this section.

SEC. 13114. ADVANCED OIL RECOVERY RESEARCH, DEVELOPMENT AND DEMONSTRATION.—(a) **PROGRAM.**—The Secretary shall carry out a national program of research, development and demonstration to increase the economic recoverability of domestic oil resources. Such program shall address both advanced secondary oil recovery and tertiary oil recovery and shall include but not be limited to the following areas—

(1) transfer of proven recovery technologies to producers and operators of wells that would otherwise be likely to be abandoned in the near term due to declining production;

(2) development, field testing, and transfer of recovery technologies to operators of wells in high priority reservoirs ranked primarily on the basis of oil recovery potential and risk of abandonment; and

(3) the identification and development of new recovery techniques.

(b) **COOPERATIVE AGREEMENTS.**—The Secretary may enter into cooperative agreements with producers, service companies, and technical support organizations for field demonstration projects to be undertaken on a cost-shared basis under this section.

(c) **COST-SHARING.**—(1) The Secretary shall require at least 50 per centum of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is neces-

sary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13115. TAR SANDS.—(a) **POLICY.**—It is the policy of the United States to promote the development and production, by all means consistent with sound engineering and environmental practices, of deposits of tar sands.

(b) **DEFINITION.**—The term “tar sand” means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either: (1) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise; or (2) contains a hydrocarbonaceous material and is produced by mining or quarrying.

(c) **STUDY.**—The Secretary, in consultation with the Secretary of the Interior, shall submit a study to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate within one year from the date of enactment of this Act. Such study shall identify and evaluate the development potential of sources of tar sands in the United States. The study shall also identify and evaluate processes for extracting oil from the identified tar sands sources, including existing tar sands waste tailings, and evaluate the environmental benefits of, and the potential for co-production of minerals and metals from, such processes.

(d) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992 and 1993 to carry out the purposes of this section.

SEC. 13116. TELECOMMUTING STUDY.—(a) **STUDY.**—The Secretary, in consultation with the Secretary of Transportation, shall conduct a study of the potential costs and benefits to the energy and transportation sectors of telecommuting. The study shall include—

(1) an estimation of the amount and type of reduction of commuting by form of transportation type and numbers of commuters;

(2) an estimation of the potential number of lives saved;

(3) an estimation of the reduction in environmental pollution, in consultation with the Environmental Protection Agency;

(4) an estimation of the amount and type of reduction of energy use and savings by form of transportation type; and

(5) an estimation of the social impact of widespread use of telecommuting.

(b) This study shall be completed no more than one hundred and eighty days after the date of enactment of this Act. A report, summarizing the results of the study, shall be transmitted to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate no more than sixty days after completion of this study.

SEC. 13117. STUDY OF MINIMIZATION OF NUCLEAR WASTE.—(a) **STUDY.**—The Secretary shall conduct a study of the potential for minimizing the volume and toxic lifetime of nuclear waste, includ-

ing an analysis of viability of existing technologies for this purpose and an assessment of the extent of research and development required for new technologies.

(b) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

SEC. 13118.—NUCLEAR WASTE MANAGEMENT PLAN.—(a) **PREPARATION AND SUBMISSION OF REPORT.**—The Secretary, in consultation with the Nuclear Regulatory Commission and the Environmental Protection Agency, shall prepare and submit to Congress a report on whether current programs and plans for management of nuclear waste as mandated by the Nuclear Waste Policy Act of 1982 (Public Law 97-425; 42 U.S.C.10101 et seq.) are adequate for management of any additional volumes or categories of nuclear waste that might be generated by any new nuclear power plants that might be constructed and licensed after the date of enactment of this Act. The Secretary shall prepare this report for submission to the President and the Congress within a year after the date of enactment of this Act. The report shall examine any new relevant issues related to management of spent fuel and high-level nuclear waste that might be raised by the addition of new nuclear-generated electric capacity, including anticipated increased volumes of spent fuel or high-level waste, any need for additional interim storage capacity prior to final disposal, transportation of additional volumes of waste, and any need for additional repositories for deep geologic disposal.

(b) **OPPORTUNITY FOR PUBLIC COMMENT.**—In preparation of the report required under subsection (a), the Secretary shall offer members of the public an opportunity to provide information and comment and shall solicit the views of the Nuclear Regulatory Commission, the Environmental Protection Agency, and other interested parties.

(c) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

SEC. 13119. MATH AND SCIENCE EDUCATION PROGRAM.—(a) **PROGRAM.**—The Secretary shall enter into contracts with existing qualified entities to conduct science and mathematics education programs that supplement the Special Programs for Students from Disadvantaged Backgrounds carried out by the Secretary of Education under sections 417A through 417F of Public Law 89-329, as amended (20 U.S.C. 1070d through 1070d-1d).

(b) **PURPOSE.**—(1) The purpose of the programs shall be to provide support to Federal, State, and private programs designed to promote the participation of low-income and first generation college students as defined in section 417A of Public Law 89-329, as amended (20 U.S.C. 1070d-d), in post-secondary science and mathematics education.

(2) Support activities may include—

- (A) the development of educational materials;
- (B) the training of teachers and counselors;
- (C) the establishment of student internships;
- (D) the development of seminars on mathematics and science;
- (E) tutoring in mathematics and science;
- (F) academic counseling;

(G) the development of opportunities for research; and

(H) such other activities that may promote the participation of low-income and first generation college students in post-secondary science and mathematics education.

(c) SUPPORT.—(1) In carrying out the purpose of this section, the entities may provide support under subsection (b)(2) to—

(A) low-income and first generation college students; and

(B) institutions of higher education, public and private agencies and organizations, and secondary and middle schools that principally benefit low-income students.

(2) The qualified entities shall, to the extent practicable, coordinate support activities under this section with the Secretary of Education and the Secretary.

(d) COOPERATION WITH QUALIFIED ENTITIES.—The Secretary shall cooperate with qualified entities and, to the extent practicable, make available to the entities such personnel, facilities, and other resources of the Department of Energy as may be necessary to carry out the duties of the entities.

(e) REPORT.—Not later than October 1 of each year, the entities shall report to the Secretary, the Secretary of Education, and the Congress on—

(1) progress made to promote the participation of low-income and first generation college students in post-secondary science and mathematics education by—

(A) the qualified entities;

(B) other mathematics and science education programs of the Department of Energy; and

(C) the Special Programs for Students from Disadvantaged Backgrounds of the Department of Education; and

(2) recommendations for such additional actions as may be needed to promote the participation of low-income students in post-secondary science and mathematics education.

(f) EFFECT ON EXISTING PROGRAMS.—The programs in this section shall supplement and be developed in cooperation with the current mathematics and science education programs of the Department of Energy and the Department of Education but shall not supplant them.

(g) DEFINITION.—For purposes of this section, the term “qualified entity” means a nonprofit corporation, association, or institution that has demonstrated special knowledge of, and experience with, the education of low-income and first generation college students and whose primary mission is the operation of national programs that focus on low-income students and provide training and other services to educators.

(h) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

TITLE XIV—COAL, COAL TECHNOLOGY AND ELECTRICITY

Subtitle A—Coal and Coal Technology

SEC. 14101. COAL RESEARCH, DEVELOPMENT AND DEMONSTRATION PROGRAM.—(a) ESTABLISHMENT.—(1) The secretary, in consultation with the National Coal Council and other representatives of the

public as the Secretary deems necessary, shall, in accordance with the Federal Nonnuclear Energy Research and Development Policy Act of 1974 (42 U.S.C. 5901-5920), conduct a research, development, and demonstration program within the Department of Energy for advanced coal-based technologies with the goals and objectives of—

(A) achieving the control of sulfur oxides, oxides of nitrogen, or air toxics at levels of proficiency greater than currently available commercial technology;

(B) achieving the cost competitive conversion of coal into energy forms usable in the transportation sector;

(C) demonstrating the conversion of coal to synthetic gaseous, liquid, and solid fuels; and

(D) demonstrating, in cooperation with other Federal and State agencies, the use of coal-derived fuels in mobile equipment, with opportunities for industrial cost-sharing participation.

(2) The coal technology development program shall also be designed to assure the timely development of cost-effective technologies or energy production processes or systems utilizing coal which achieve greater efficiency in the conversion of coal to useful energy when compared to currently available commercial technology for the use of coal and the control of emissions from the combustion of coal. Such program shall be designed to assure the availability for commercial use of such technologies by the year 2010. As part of such program, the Secretary shall consider the potential benefits of conducting additional solicitations pursuant to the Clean Coal Program established by Public Law 98-473 and is authorized to carry out such additional solicitations.

(b) REPORT.—Within two hundred and forty days after the date of enactment of this Act the Secretary shall transmit to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report which shall include—

(1) a detailed description of ongoing research and development activities regarding advanced coal-based technologies undertaken by the Department of Energy, other Federal or State government departments or agencies and, to the extent such information is publicly available, other public or private organizations in the United States and other countries;

(2) a listing and analysis of current Federal and State government regulatory and financial incentives that could further the goals of the program established by this section;

(3) recommendations, if any, regarding the manner in which the cost-sharing demonstrations conducted pursuant to the Clean Coal Program established by Public Law 98-473 might be modified and extended in order to assure the timely demonstrations of advanced coal-based technologies by the year 2010 and assure that the goals established by this section are achieved; and

(4) a detailed plan for conducting the research, development and demonstration program to achieve the goals and objectives of subsection (a) of this section, which plan shall include a description of—

(A) the program elements and management structure to be utilized; and

(B) the technical milestones to be achieved with respect to each of the advanced coal-based technologies included in the plan.

(c) **ANNUAL REPORT.**—Within twelve months after submittal of the report described in subsection (b) of this section, and every twelve months thereafter for a period of five years, the Secretary shall submit to the Congress a report that provides a detailed description of the status of development of the advanced coal-based technologies and the research, development, and demonstration activities undertaken to carry out the program required by this section.

(d) **DEFINITION.**—As used in this section, the term “advanced coal-based technologies” means, but is not limited to, the following—

- (1) advanced integrated gasification combined cycle;
- (2) pressurized fluidized bed combustion technology capable of achieving higher thermal conversion efficiency than can be achieved through ongoing demonstration projects;
- (3) direct and indirect coal-fired turbines;
- (4) coal refining processes, including coke production, capable of (A) efficiently producing or utilizing the energy contained in coal and coal byproducts, (B) upgrading gaseous, liquid and solid coal byproducts into products with higher economic value, and (C) utilizing the products and byproducts of such processes;
- (5) magnetohydrodynamics;
- (6) molten carbonate and solid oxide fuel cells;
- (7) cofiring coal with non-coal fuels including natural gas;
- (8) coal liquefaction processes; and
- (9) other coal-based technologies or processes or systems that are capable of achieving thermal conversion efficiencies equal to or greater than fifty percent.

(e) **AUTHORIZATION.**—There is authorized to be appropriated, such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14102. NON-FUEL USE OF COAL.—(a) **PLAN.**—Not later than one hundred and twenty days after the date of enactment of this Act, the Secretary shall submit to Congress a plan for research, development, and demonstration with respect to technologies for non-fuel use of coal, including—

- (1) production of coke and other carbon products derived from coal;
- (2) production of coal-derived, carbon-based chemical intermediates that are precursors of value-added chemicals and polymers;
- (3) production of chemicals from coal-derived synthesis gas;
- (4) coal treatment processes, including methodologies such as solvent-extraction techniques that produce low ash, low sulfur, coal-based chemical feedstocks; and
- (5) waste utilization, including recovery, processing, and marketing of products derived from sulfur, carbon dioxide, nitrogen, and ash from coal.

(b) **JOINT VENTURES.**—As part of the plan under subsection (a), the Secretary may propose specific joint ventures to accelerate the development and commercialization of technologies for nonfuel uses of coal.

(c) **PLAN CONTENTS.**—The plan under subsection (a) shall address and evaluate—

(1) the known and potential products and processes for the use of coal for products in the chemical, utility, fuel, steel, and carbon-based materials industries;

(2) the costs, benefits and economic feasibility of using coal products in the chemical and materials industries, including value-added chemicals, carbon-based products, coke, and waste derived from coal;

(3) the economics of the refining of coal and coal byproducts to produce nonfuel products;

(4) the economics of co-production of products from coal in conjunction with production of electric power, thermal energy, and fuel;

(5) the economics of coal utilization in comparison with other feedstocks that might be used for the same purposes;

(6) the steps that can be taken by the public and private sectors to bring about commercialization of research results produced by the research program recommended; and

(7) the past development, current status, and future potential of coal products and processes associated with nonfuel use of coal.

(d) **RESEARCH AND DEVELOPMENT.**—The Secretary shall conduct a program of research and development under the plan under subsection (a).

(e) **FINANCIAL ASSISTANCE.**—The Secretary may provide financial assistance for a research project under this section to the extent the Secretary finds that such project—

(1) furthers achievement of the goals and purposes of this Act;

(2) offers promise for commercial application; and

(3) has a reasonable prospect of support in at least 50 percent of its direct costs from non-Federal funds.

(f) **CONSULTATION.**—In preparing the plan and carrying out research under this section, including evaluating the technical progress, feasibility, and most effective means for utilizing the results of research, the Secretary shall consult with the private sector.

(g) **AUTHORIZATION.**—There is authorized to be appropriated a total of \$20,000,000 for fiscal years 1992 through 1994 to carry out the purposes of this section.

SEC. 14103. COAL REFINING PROGRAM.—(a) **PROGRAM.**—The Secretary, in consultation with the National Coal Council, shall, in accordance with the Federal Nonnuclear Energy Research and Development Policy Act of 1974 (42 U.S.C. 5901-5920), conduct a research, development, demonstration, and commercialization program for coal refining technologies, including technologies for refining high sulfur coals, low sulfur coals, sub-bituminous coals and lignites to produce clean-burning transportation fuels, or compliance boiler fuels, or both, fuel additives, lubricants, chemical feed-

stocks, and carbon-based manufactured products, either alone or along with electricity, more economically and efficiently than can be produced utilizing currently available commercial technology. The goals of the coal refining technology development program shall be designed to assure—

(1) the timely development of technologies, including direct and indirect liquefaction processes and other energy production processes or systems to produce coal-derived fuels and coproducts;

(2) the capability to produce a range of coal-derived transportation fuels, including oxygenated hydrocarbons, boiler fuels, turbine fuels, and coproducts, which can reduce dependence on imported oil by displacing conventional petroleum in the transportation sector and other sectors of the economy;

(3) reduction in the cost of producing such coal-derived fuels and coproducts;

(4) the control of emissions from the combustion of coal-derived fuels, and;

(5) the availability for commercial use of such technologies by the year 2000.

(b) **REPORT AND PLAN.**—Within one hundred and twenty days after the date of enactment of this Act the Secretary shall transmit to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report which shall include—

(1) a detailed description of ongoing research and development activities regarding coal refining technologies undertaken by the Department of Energy, other Federal or State government departments or agencies and, to the extent such information is publicly available, other public or private organizations in the United States and other countries;

(2) a detailed plan for conducting the research, development, demonstration, and commercialization program to achieve the goals and objectives of subsection (a) of this section, which plan shall include a description of—

(A) the program elements and management structure to be utilized; and

(B) the technical milestones to be achieved with respect to each of the coal refining technologies included in the plan;

(c) **DEMONSTRATION PROJECTS.**—Within twelve months after the submittal of the report described in subsection (b) of this section, the Secretary shall solicit proposals from appropriate parties and may thereafter enter into agreements with such parties to undertake commercial scale demonstration projects of coal refining processes. In designing the solicitation under this subsection, and taking into consideration the goals of subsection (a) of this section, the Secretary shall—

(1) establish technology classes for the various coal refining processes;

(2) enter into agreements for the construction of not more than one project per technology class, but in no event less than two commercial scale projects for the program in total;

(3) require that each project has a reasonable prospect of commencing operation by January 1, 2000.

(d) **COST-SHARING.**—(1) The Secretary shall require at least 50 per centum of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(e) **ANNUAL REPORT.**—Within twelve months after the date of enactment of this Act, and every twelve months thereafter for a period of five years, the Secretary shall submit to the Congress a report that provides a detailed description of the status of development of coal refining technologies and the research, development, demonstration, and commercialization activities undertaken to carry out the program required by this section.

(f) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14104. UNDERGROUND COAL GASIFICATION.—(a) **PROGRAM.**—The Secretary shall conduct a research, development, and demonstration program for underground coal gasification technology for in-situ conversion of coal to a cleaner burning, easily transportable gaseous fuel. The goal and objective of this program shall be to accelerate the development and commercialization of underground coal gasification. In carrying out this program, the Secretary shall give equal consideration to all ranks of coal.

(b) **DEMONSTRATION PROJECTS.**—As part of the program authorized in subsection (a), the Secretary shall solicit proposals for at least one demonstration project of underground coal gasification technology and may provide financial assistance for any project that has a reasonable expectation to fulfill the goal and objective of subsection (a).

(c) **COST-SHARING.**—(1) The Secretary shall require at least 50 per centum of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14105. LOW-RANK COAL RESEARCH AND DEVELOPMENT.—(a) **PROGRAM.**—The Secretary shall pursue a program of research and development with respect to the technologies needed to expand the

use of low-rank coals which take into account the unique properties of lignites and sub-bituminous coals, including, but not limited to the following areas—

- (1) high value-added carbon products;
- (2) fuel cell applications;
- (3) emissions control and combustion efficiencies;
- (4) coal water fuels and underground coal gasification;
- (5) distillates; and
- (6) any other technologies which will assist in the development of niche markets for lignites and sub-bituminous coals.

(b) **IMPLEMENTATION.**—In carrying out this program, the Secretary shall enter into contracts, cooperative agreements and jointly sponsored research programs with, and provide grants to, qualified persons and use any other means deemed appropriate by the Secretary.

(c) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14106. MAGNETOHYDRODYNAMICS.—(a) **PROGRAM.**—The Secretary shall carry out a proof-of-concept program in magnetohydrodynamics. The purpose of this program shall be to prove the adequacy of the engineering and design information required to successfully design, construct, and operate an MHD retrofit plant based upon conceptual designs of a "MHD Retrofit System to a Coal Fired Generating Plant," which have been completed under Department of Energy contracts.

(b) **SOLICITATION OF PROPOSALS.**—In order to carry out the program authorized in subsection (a), the Secretary shall solicit proposals from the private sector and seek to enter into an agreement with appropriate parties.

(c) **COST-SHARING.**—(1) The Secretary shall require at least 50 per centum of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) **EXTENSION OF PROGRAM.**—The Secretary may extend if necessary the completion date for the proof-of-concept program to September 30, 1995.

(e) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14107. COAL FIRED LOCOMOTIVES.—(a) The Secretary shall conduct a research, development, and demonstration program for utilizing "ultra-clean coal-water slurry" in diesel locomotive engines. The program shall address, but not be limited to, the following—

- (1) required engine retrofit technology;
- (2) coal-fuel production technology;

- (3) emission control requirements;
- (4) the testing of low-Btu highly reactive fuels;
- (5) fuel delivery and storage systems requirements; and
- (6) other infrastructure required to support commercial deployment.

(b) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14108. COAL EXPORTS.—(a) **PLAN.**—Within one hundred and eighty days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Commerce, the Secretary of the Interior, the Secretary of State, and the United States Trade Representative, shall submit to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, a plan for expanding the export of United States coal.

(b) **PLAN CONTENTS.**—Such plan shall include—

(1) identification of the location, size and projected growth in potential foreign markets for coal produced in the United States;

(2) identification by country of the existence of barriers to United States coal exports, including foreign coal production and utilization subsidies, tax treatment, labor practices, tariffs, quotas, and other nontariff barriers;

(3) recommendations and an action plan for addressing any such barriers;

(4) an evaluation of existing United States infrastructure, and any new infrastructure requirements within the United States to support an expansion of United States coal exports, including ports, vessels, rail lines, and any other supporting infrastructure; and

(5) identification of opportunities for blending United States coal exports with coal indigenous to the importing country to enhance energy efficiency and environmental performance.

(c) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14109. CLEAN COAL TECHNOLOGY EXPORT COORDINATING COUNCIL.—(a) **ESTABLISHMENT.**—There shall be established a Clean Coal Technology Export Coordinating Council (hereinafter “Council”) which shall seek to facilitate and expand the export and use of clean coal technologies. The Council shall place a priority on the export and use of clean coal technologies in lesser-developed countries.

(b) **MEMBERSHIP.**—The Council shall consist of the Secretary, who shall serve as its chairperson, the Secretary of Commerce, the Secretary of State (including a designee from each of the Agency for International Development and the Trade and Development Program), the Administrator of the Environmental Protection Agency, the Secretary of the Treasury, the President and Chairman of the Export-Import Bank and the President and Chief Executive Officer of the Overseas Private Investment Corporation.

(c) **CONSULTATION.**—In undertaking its responsibilities, the Council shall consult with representatives from the United States coal

industry, the electric utility industry, manufacturers of equipment utilizing clean coal technology, members of organizations formed to further the goals of environmental protection or to promote the development and use of clean coal technologies, and other appropriate interested members of the public.

(d) DUTIES.—In furthering the purposes of this section, the Council shall, through the Department and other member agencies, exercise such authorities as may be available to it to—

(1) facilitate the establishment of technical training for the consideration, planning, construction and operation of clean coal technologies by local users and international development personnel;

(2) cause to be established within existing departments and agencies financial assistance programs, including grants, loan guarantees, and no interest and low-interest loans, to support pre-feasibility and feasibility studies for projects that will utilize clean coal technologies and loan guarantee programs, grants, and no interest and low-interest loans, designed to facilitate access to capital and credit in order to finance such clean coal technology projects;

(3) develop and execute programs, including the establishment of financial incentives, to encourage and support private sector efforts to export clean coal technologies that are developed, manufactured or controlled by United States firms;

(4) encourage the training and understanding of clean coal technologies by representatives of foreign companies or countries intending to use coal or clean coal technologies by providing technical or financial support for training programs, workshops and other educational programs sponsored by United States firms;

(5) educate loan officers of the World Bank and other international lending institutions, commercial and energy attaches at embassies of the United States, and such other personnel as the Council deems appropriate, for the purposes of providing information about clean coal technologies to foreign governments or potential project sponsors of clean coal technologies;

(6) augment budgets for trade and development programs supported by member agencies of the Council for the purpose of supporting financially pre-feasibility or feasibility studies for projects that will utilize clean coal technologies;

(7) review ongoing clean coal technology projects and review and approve planned clean coal technology projects, which are sponsored abroad by any Federal Government agency to determine whether such projects are consistent with the overall goals and objectives of this section;

(8) coordinate the activities of the member agencies of the Council in order to assure that policies of the Council are implemented in a timely fashion; and

(9) undertake such other actions or activities, consistent with existing law and regulations, as may, in the judgment of the Secretary, be necessary to achieve the purposes of this section.

(e) DATA AND INFORMATION.—The Council shall be responsible for the development of a comprehensive data base and information dissemination system relating to the availability of clean coal technol-

ogies and an ongoing assessment of the potential need for such technologies particularly in lesser developed countries. The Council shall provide a country-by-country assessment of the potential for the use of clean coal technology. Such assessment shall include an analysis of the financing requirements to install such clean coal technology and whether such clean coal project is dependent upon foreign financial assistance, the availability of other fuel or energy resources that may be available to meet the energy requirements intended to be met by the clean coal technology, the priority of environmental considerations in the selection of the electric generating technology and the technical competence of those entities likely to be involved in the planning and operation of the electric generating facility. The Council shall make such information available to industry, Federal and international financing organizations, nongovernmental organizations, officials in countries where such clean coal technologies might be utilized and such others as the Council deems necessary. In developing this data base and ongoing assessment, the Council shall consult with the Committee on Renewable Energy Commerce and Trade.

(f) **PLAN.**—Within one hundred and eighty days after the Secretary submits the report to the Congress as required by section 409 of Public Law 101-549, the Council, in consultation with those persons referenced in subsection (c) of this section, shall provide to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a plan which details actions to be taken in order to address those recommendations and findings made in the report submitted pursuant to section 409 of Public Law 101-549. As a part of the plan required by this subsection, the Secretary shall specifically address the adequacy of financial assistance available from Federal departments and agencies and international financing organizations to aid in the financing of pre-feasibility and feasibility studies and projects that would utilize a clean coal technology in lesser developed countries.

(g) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14110. COAL FUEL MIXTURES.—Within one year following the date of enactment of this Act, the Secretary shall submit a report to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate on the status of technologies for combining coal with other materials, such as oil or water fuel mixtures. The report shall include—

- (1) a technical and economic feasibility assessment of such technologies;
- (2) projected developments in such technologies;
- (3) an assessment of the market potential of such technologies, including the potential to displace imported crude oil and refined petroleum products;
- (4) identification of barriers to commercialization of such technologies; and
- (5) recommendations for addressing barriers to commercialization.

SEC. 14111. NATIONAL CLEARING HOUSE.—(a) ESTABLISHMENT OF CLEARING HOUSE.—(1) The Secretary shall establish a national clearing house for the exchange and dissemination of technical information on technology relating to coal and coal-derived fuels.

(2) In establishing a clearing house pursuant this section, the Secretary shall, among other things;

(A) collect information and data on technology relating to coal, and coal-derived fuels, which can be utilized to improve environmental quality and increase energy independence;

(B) disseminate to appropriate individuals, governmental departments, agencies, and instrumentalities, institutions of higher education, and other entities, information and data collected pursuant to this provision;

(C) maintain a complete library of technology publications and treatises relating to technology information and data collected pursuant to this provision;

(D) organize and conduct seminars for government officials, utilities, coal companies, and other entities or institutions relating to technology using coal and coal-derived fuels that will improve environmental quality and increase energy independence;

(E) gather information on research grants made for the purpose of improving or enhancing technology relating to the use of coal, and coal-derived fuels, which will improve environmental quality and increase energy independence;

(F) translate into English foreign research papers, articles, seminar proceedings, test results that affect, or could affect, clean coal use technology, and other documents;

(G) encourage, during the testing of technologies, the use of coal from a variety of domestic sources, and collect or develop, or both, complete listings of test results using coals from all sources;

(H) establish and maintain an index or compilation of research projects relating to clean coal technology carried out throughout the world; and

(I) conduct economic modeling for feasibility of projects.

(3) INSTITUTIONS OF HIGHER EDUCATION.—The Secretary may select two institutions of higher education to manage and coordinate the clearing house activities. In selecting such institutions, one shall be located in a western coal producing State and one shall be located in an eastern coal producing State.

(b) GRANTS.—In carrying out the provisions of this section, the Secretary may enter into agreements with, and make grants to, the two institutions of higher education selected pursuant to paragraph (3) of subsection (a). Any such grant may be made at such time or times, in such amount, and subject to such terms and conditions as the Secretary may prescribe.

(c) COORDINATION WITH OTHER FEDERAL ENTITIES.—In carrying out the provisions of this section, the Secretary shall, from time to time, consult and coordinate his activities with other appropriate Federal departments, agencies and instrumentalities. All Federal departments, agencies, and instrumentalities shall cooperate to the fullest extent possible with the Secretary to enable him to carry out the provisions of this section.

(d) **FUNDING FROM NON-FEDERAL SOURCES.**—The Secretary may solicit and accept donations from non-Federal sources to assist in defraying expenses incurred in carrying out the provisions of this section.

(e) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14112. STUDY OF UTILIZATION OF COAL COMBUSTION BYPRODUCTS.—(a) **DEFINITIONS.**—As used in this section, the term “coal combustion byproducts” means the residues from the combustion of coal including ash, slag, and flue gas desulfurization materials. When utilized as a product, as an ingredient thereof, or as a raw material, or when handled, transported or stockpiled for such utilization, these byproducts are considered product materials.

(b) **FINDINGS.**—With respect to utilization of coal combustion byproducts, the Congress makes the following findings:

(1) Coal combustion byproducts have commercial applications, including construction of bridges, highways, airports, dams, tunnels, buildings, reclamation projects, and numerous other technically proven commercial applications.

(2) The Environmental Protection Agency has reported to Congress that utilization of coal combustion byproducts has been done in an environmentally safe manner.

(3) The use of coal combustion byproducts in an environmentally safe manner is beneficial to society in the following respects—

(A) it conserves energy since these materials are byproducts of the combustion process, require no additional energy to produce, and thus conserve the energy necessary to extract and produce virgin materials;

(B) it conserves natural resources by substituting for virgin materials such as sand, gravel and soil;

(C) it lowers electricity costs to ratepayers by producing revenues from the sale of the byproducts and by avoiding disposal costs;

(D) it conserves land resources by avoiding the need for disposal facilities; and

(E) it provides superior quality construction materials at lower cost.

(4) The Federal and State governments are in a position to encourage the utilization of coal combustion byproducts.

(c) **STUDY AND REPORT TO CONGRESS.**—(1) The Secretary shall conduct a detailed and comprehensive study on the institutional, legal and regulatory barriers to increased utilization of coal combustion byproducts by potential governmental and commercial users. Such study shall identify and investigate barriers found to exist at the Federal, State, or local level, that may have limited or may have the foreseeable effect of limiting the quantities of coal combustion byproducts that are utilized. In conducting this study, the Secretary shall consult with other departments and agencies of the Federal Government, appropriate State and local governments, and the private sector.

(2) Not later than twelve months after the date of enactment of this Act, the Secretary shall submit a report to Congress contain-

ing the results of the study required by paragraph (1) and the Secretary's recommendations for actions to be taken to increase the utilization of coal combustion byproducts. At a minimum, such report shall identify actions that would increase the utilization of coal combustion byproducts in (A) bridge and highway construction, (B) stabilizing wastes, and (C) procurement by departments and agencies of the Federal Government, by State and local governments, and in federally funded or federally subsidized procurement by the private sector.

SEC. 14113. ESTABLISHMENT OF DATA BASE AND STUDY OF COAL TRANSPORTATION RATES.—(a) **ESTABLISHMENT OF DATA BASE.**—The Secretary shall establish a data base containing, to the maximum extent practicable, all transportation rates for rail, pipeline, truck, conveyor belt, barge and other modes of transporting domestic coal during the period January 1, 1988 through December 31, 1997. The confidentiality of contract rates shall be preserved and public access to the data base shall be provided under appropriate terms and conditions that protect the confidentiality of specific contract rates.

(b) **STUDY OF COAL TRANSPORTATION RATES.**—The Secretary shall study the rates and distribution patterns of domestic coal to determine the impact of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (Public Law 101-549) and other Federal policies on such rates and distribution patterns. The study shall consider, among other factors—

(1) the extent to which coal transportation rate increases occur as a result of the enactment of the Clean Air Act and other Federal policies;

(2) any increases or decreases in the revenue to variable cost ratios of railroad coal transportation rates during the period of the study and the percentage of the delivered price of coal to electric generating facilities that is attributable to coal transportation rates, during this period;

(3) any changes in the distribution patterns of coal among the various regions of the Nation during the study period; and

(4) any electricity rate increases or decreases in the various regions of the Nation during the period of study that are attributable to coal transportation costs.

(c) **REPORTS TO CONGRESS.**—The Secretary shall submit an interim report to Congress on January 1, 1993, and a final report to Congress, together with any recommendations, on January 1, 1995. The Secretary shall submit an additional report to Congress, with recommendations, on January 1, 1998. The Administrator of the Energy Information Administration and the Chairmen of the Federal Energy Regulatory Commission and the Interstate Commerce Commission shall cooperate fully with the Secretary in the development of the data base and studies authorized by this section.

Subtitle B—Electricity

SEC. 14201. APPLICABILITY OF NEW SOURCE REVIEW TO EXISTING ELECTRIC UTILITY STEAM GENERATING UNITS.—(a) **APPLICABILITY OF NEW SOURCE PERFORMANCE STANDARDS.**—For purposes of the Clean Air Act, no physical change, or change in the method of operation,

at an existing electric utility steam generating unit shall be treated as a modification for purposes of section 111 of such Act, provided such change does not increase the maximum hourly emissions of any pollutant regulated under that section above the maximum hourly emissions achievable at that unit during the last five years of operation prior to the change.

(b) **POLLUTION CONTROL PROJECTS.**—For purposes of the Clean Air Act, the addition, replacement or utilization of any pollution control project at an existing electric utility steam generating unit primarily for purposes of reducing emissions shall not be considered a physical change or change in method of operation for purposes of section 111, part C or part D of such Act. For purposes of this subsection, 'pollution control project' includes, but is not limited to, any:

(1) sulfur dioxide control technology, nitrogen oxide control system, or particulate control technology (including clean coal technology); or

(2) temporary or permanent conversions to lower sulfur content fuels, including physical and operational changes necessary to accommodate the utilization of such fuels.

(c) **OTHER PROJECTS.**—For purposes of the Clean Air Act, except for an existing electric utility steam generating unit that is subject to the provisions of subsection (b), no physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for purposes of part C or part D of such Act for a pollutant: *Provided*, That such change does not result in a significant net increase in representative actual annual emissions of a regulated pollutant during normal operations at the source in the case of part C and of a criteria pollutant in the case of part D. In projecting future annual emissions based on any increased capacity utilization, the Administrator shall exclude that portion of the increased rate of utilization, if any, due to factors unrelated to the physical or operational change, including an increase in projected capacity utilization equal to the rate of electricity demand growth for the utility system as a whole.

(d) **MAXIMUM ACHIEVABLE CAPACITY.**—Subsections (a), (b), and (c) of this section shall not apply to any physical change, or change in the method of operation, at an existing electric utility steam generating unit if such change results in an increase in the unit's maximum achievable capacity above the maximum capacity achievable at that unit during the last five years of operation prior to the change or other such period demonstrated by the permittee to be more representative.

(e) **RECONSTRUCTION.**—Subsection (a) shall not apply to any physical change, or change in the method of operation, at an existing electric utility steam generating unit if the fixed capital cost of such change or replacement of components exceeds 50 per centum of the fixed capital cost that would be required to construct a comparable entirely new facility.

(f) **NITROGEN OXIDE CONTROL REQUIREMENTS.**—(1) For purposes of the Clean Air Act, any modification, as defined in section 169(2)(C) of such Act, at an existing electric utility steam generating unit subject to section 165 of such Act shall be deemed to satisfy the

technology requirements of section 165(a)(4) for nitrogen oxides if it meets the following:

(A) For a unit subject to a requirement promulgated pursuant to section 407 of the Clean Air Act, immediately following the modification, the unit shall be required to meet the nitrogen oxide emission limitation specified for that boiler type pursuant to section 407. In the event that the modification precedes the establishment of nitrogen oxides emissions limitations for that boiler type pursuant to section 407, the unit shall be required to meet the applicable emission limitation upon the date required by the regulation.

(B) For an existing electric utility steam generating unit not subject to section 407, immediately following the modification, the unit shall be required to meet the nitrogen oxide limit equivalent to the limit achievable using "low-NO_x burners".

(2) Any State or local permitting authority shall retain the right to impose more stringent limitations for control of nitrogen oxides.

(g) Nothing in this section shall authorize an increase in emissions which causes or contributes to a violation of a national ambient air quality standard, PSD increment, or visibility limitation.

SEC. 14202. EXCESS CAPACITY STUDY.—The Secretary shall study and report to Congress by June 30, 1992, on any physical impediments to the transfer of excess electrical energy from regions of the country having surpluses to regions of the country having shortages and the reasons therefor.

SEC. 14203. CALCULATION OF AVOIDED COST.—Nothing in section 210 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617) requires a State regulatory authority or nonregulated electric utility to treat a cost reasonably identified to be incurred or to have been incurred in the construction or operation of a facility or a project which has been selected by the Department of Energy and provided Federal funding pursuant to the Clean Coal Program authorized by Public Law 98-473 as an incremental cost of alternative electric energy.

SEC. 14204. CLEAN COAL TECHNOLOGY REGULATORY INCENTIVES.—

(a) DEFINITION.—For purposes of this section, the term "clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, which is not in widespread use as of the date of enactment of this title.

(b) FEDERAL RATE INCENTIVES.—(1) Within twenty-four months after enactment of this section, the Federal Energy Regulatory Commission shall complete a rulemaking to establish a demonstration program for regulatory incentives to promote the development of clean coal technologies and other innovative control technologies that limit power plant emissions. The regulatory incentives shall include—

(A) establishment of an incentive rate of return for clean coal or other innovative emission control technologies that recognizes their inherent risk; and

(B) allowance of a ten- to twenty-year amortization period to recover the capital costs of a clean coal or other innovative emission control technology.

(2) The Federal Energy Regulatory Commission demonstration program is subject to the following—

(A) the program initially will have a five-year life;

(B) the program will cover no more than four units in each technology class; and

(C) the technology classes eligible for the program should be reasonably likely to realize significant cost reductions when employed.

(3) At the end of the five-year demonstration program, the Federal Energy Regulatory Commission shall review the merits of the program and determine whether it should be extended or made permanent.

(c) **FERC PREAPPROVAL OF PRUDENCE FOR CLEAN COAL TECHNOLOGY COSTS.**—The Federal Energy Regulatory Commission shall establish a process for negotiating with potential developers of clean coal technology or other innovative control technology projects to agree upon cost caps for future projects and preapproval of the prudence of expenses for those projects if the expenses fall within the agreed-upon cap.

(d) **PRIORITY FOR UNITS LOCATED IN STATES WITH INCENTIVE PROGRAMS.**—To the extent practicable, the Federal Energy Regulatory Commission shall, in the selection of units which will be provided incentive rate treatment under subsections (b) or (c), give priority to units located in states where—

(1) the State regulatory commission with jurisdiction over the retail rates of the utility seeking such incentive rate treatment has approved comparable incentives for inclusion in the utility's retail rates, or, if the utility makes no retail sales, where comparable retail rate treatment has been approved for other utilities which make retail sales in the State or States in which the wholesale customers of the utility seeking such incentive rate treatment are located; and

(2) the State regulatory commission accords, to the extent relevant and within its jurisdiction, similar incentives to non-investor-owned utilities on a basis no less favorable than that accorded to investor-owned utilities within its jurisdiction.

(e) **ENCOURAGEMENT OF STATE INCENTIVE PROGRAMS.**—(1) Because the use of clean coal technologies is in the Nation's interest, States, including their agencies and political subdivisions which regulate public utility rates and charges, are encouraged to provide additional incentives for their implementation. Those incentives may include, but are not limited to—

(A) preapproval of recovery of capital costs and other expenses, within reasonable bounds agreed upon before project construction;

(B) elimination of retroactive 'used and useful' reviews for clean coal technologies;

(C) rapid amortization of clean coal technology expenditures; and

(D) immediate recovery of a portion of clean coal technology expenses through a fuel adjustment clause or by some other method.

(2) **REPORT OF THE SECRETARY.**—(A) Within one year after the date of enactment of this Act, the Secretary shall report to Congress on his progress in encouraging State regulatory authorities to provide regulatory incentives to utilities to invest in clean coal technologies. Such report shall include detailed information on programs initiated by the Department of Energy to encourage such State action and shall describe any regulatory incentives that have been adopted by States as a result of actions taken by the Secretary.

(B) The report required under subparagraph (A) shall also include recommendations, if any, on further action that could be taken by the Department of Energy, other Federal agencies, or the Congress in order to encourage State regulatory authorities to provide regulatory incentives.

TITLE XV.—PUBLIC UTILITY HOLDING COMPANY ACT REFORM

SEC. 15101. **EXEMPT WHOLESALE GENERATORS.**—(a) **DEFINITIONS.**—For purposes of this title, the term—

(1) “exempt wholesale generator” means any person who: (A) is engaged directly, or indirectly through one or more affiliates of such person, as defined under section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79b(a)(11)(B)), exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale, but such term excludes an affiliate of a registered holding company which was in existence as of the date of enactment of this title, unless the Commission has consented to such affiliate being an exempt wholesale generator; and (B) provides notice to the Commission, in such form as the Commission may prescribe, that such person is an exempt wholesale generator;

(2) “eligible facility” means a facility, wherever located, used for the generation of electric energy exclusively for sale at wholesale, including inter-connecting transmission facilities necessary to effect such sale at wholesale, but shall exclude any facility for which consent is required under subsection (c) if such consent has not been obtained. For purposes of this definition, the term “facility” shall include a portion of a facility and shall include a facility the construction of which has not been commenced or completed;

(3) “sale of electric energy at wholesale” shall have the same meaning as provided in section 201(d) of the Federal Power Act, as amended (16 U.S.C. 824(d));

(4) “retail rates and charges” means rates and charges for the sale of electric energy directly to consumers;

(5) “Commission” means the Securities and Exchange Commission; and

(6) “the Act” means the Public Utility Holding Company Act of 1935, as amended (15 U.S.C. 79 et seq.).

(b) **APPLICABILITY OF DEFINITIONS IN PUHCA.**—All of the terms used in this title and defined in the Act shall have the same meanings as defined therein.

(c) **STATE CONSENT FOR ELIGIBLE FACILITIES.**—If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of the date of enactment of this title, in order for the facility to be considered an eligible facility consent must be obtained from every State commission having jurisdiction over any such rate or charge: *Provided*, That in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company: (1) consent with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company; and (2) the approval of the Commission under the Act shall not be required for the transfer of the facility to an exempt wholesale generator.

(d) **EXEMPTION OF EWGS FROM PUHCA.**—An exempt wholesale generator shall not be considered an electric utility company under section 2(a)(3) of the Act and, whether or not a subsidiary company, an affiliate, or an associate company of a holding company, shall be exempt from all provisions of the Act.

(e) **OWNERSHIP OF EWGS BY EXEMPT HOLDING COMPANIES.**—Notwithstanding any provision of the Act, a holding company that is exempt under section 3 of the Act shall be permitted without condition or limitation under the Act to acquire and maintain an interest in the business of one or more exempt wholesale generators.

(f) **OWNERSHIP OF EWGS BY REGISTERED HOLDING COMPANIES.**—Notwithstanding any provision of the Act and the Commission's jurisdiction as provided under subsection (g) of this section, a registered holding company shall be permitted (without the need to apply for, or receive, approval from the Commission, and otherwise without condition under the Act), to acquire and hold the securities, or an interest in the business, of one or more exempt wholesale generators.

(g) **FINANCING AND OTHER RELATIONSHIPS BETWEEN EWGS AND REGISTERED HOLDING COMPANIES.**—The issuance of securities by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, the guarantee of securities of an exempt wholesale generator by a registered holding company, the entering into service, sales or construction contracts, and the creation or maintenance of any other relationship in addition to that described in subsection (f) between an exempt wholesale generator and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under the Act: *Provided, That*—

(1) section 11 of the Act shall not prohibit the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of where facilities owned or operated by such exempt wholesale generators are located), and such ownership by a registered holding company shall be deemed consistent with the operation of an integrated public utility system;

(2) the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of where facilities owned or operated by such exempt wholesale generators are located) shall be considered as reasonably incidental, or economically necessary or appropriate to the operations of an integrated public utility system;

(3) in determining whether to approve (A) the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, or (B) the guarantee of a security of an exempt wholesale generator by a registered holding company, the Commission shall not make a finding that such security is not reasonably adapted to the earning power of such company or to the security structure of such company and other companies in the same holding company system, or that the circumstances are such as to constitute the making of such guarantee an improper risk for such company, unless the Commission first finds that the issue or sale of such security, or the making of the guarantee, would have a substantial adverse impact on the financial integrity of the registered holding company system;

(4) in determining whether to approve (A) the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator, or (B) other transactions by such registered holding company or by its subsidiaries other than with respect to exempt wholesale generators, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an exempt wholesale generator upon the registered holding company system, unless the approval of the issue or sale or other transaction, together with the effect of such capitalization and earnings, would have a substantial adverse impact on the financial integrity of the registered holding company system; and

(5) the Commission shall make its decision under paragraph (3) to approve or disapprove the issue or sale of a security or the guarantee of a security within 120 days of the filing of a declaration concerning such issue, sale or guarantee.

SEC. 15102. OWNERSHIP OF EXEMPT WHOLESALE GENERATORS AND QUALIFYING FACILITIES.—The ownership by a person of one or more exempt wholesale generators shall not result in such person being considered as being primarily engaged in the generation or sale of electric power within the meaning of sections 3(17)(C)(ii) and 3(18)(B)(ii) of the Federal Power Act, as amended (16 U.S.C. 796 (17)(C)(ii) and 796(18)(B)(ii)).

SEC. 15103. PREVENTION OF STRANDED INVESTMENT.—The Federal Energy Regulatory Commission shall not approve a rate or charge for the sale of electric energy at wholesale by an exempt wholesale generator if such sale of electric energy would result in a State commission not permitting such purchaser to recover in retail rates and charges any portion of its capital investment in an electric generation facility:

(a) which facility was under construction as of the date of enactment of this section; or

(b) upon which portion such purchaser has previously been permitted to earn a rate of return in retail rates and charges subject to such State commission's jurisdiction.

SEC. 15104. PREVENTION OF SHAM WHOLESALE TRANSACTIONS.—The Federal Energy Regulatory Commission shall not approve a rate or charge for the sale of electric energy at wholesale by an exempt wholesale generator if:

(a) such electric energy would be resold by the purchaser to any electric consumer; and

(b) the purchaser: (1) is not a municipal electric system, state power authority, electric power cooperative or a public utility under State law; or (2) would not utilize transmission or distribution facilities owned by such purchaser to deliver all such electric energy to such electric consumer.

SEC. 15105. PROTECTION AGAINST ABUSE OF AFFILIATE RELATIONSHIPS.—A rate or charge for the sale of electric energy at wholesale in interstate commerce by an exempt wholesale generator shall not be considered just and reasonable within the meanings of sections 205 and 206 of the Federal Power Act (16 U.S.C. 824d and 824e) if the rate or charge allows the exempt wholesale generator to receive undue advantage resulting from the fact that the purchaser of such electric energy is an affiliate or associate company of such exempt wholesale generator.

SEC. 15106. STATE AUTHORITY.—Section 209 of the Federal Power Act (16 U.S.C. 824h) is amended by adding at the end the following new subsection:

"(d)(1) Except as set forth in paragraph (2), nothing in this Act shall limit the authority of a State commission in accordance with State law to allow or disallow on grounds of prudence or imprudence the inclusion of the costs of electric energy purchased at wholesale in retail rates subject to such State commission's jurisdiction: *Provided*, That at the request of a utility which has been offered a sale of electric energy at wholesale from an exempt wholesale generator, any State commission with jurisdiction over the retail rates of such utility shall determine the prudence or imprudence of the utility's proposed action with regard to the offer in advance of the effective date of the action, and such determination shall be binding upon the State commission for purposes of the inclusion in retail rates.

"(2) An order by the Commission accepting or establishing as just and reasonable the terms of an agreement for the sale and purchase or interchange of electric energy among affiliates of a registered holding company shall preempt the authority of any State commission to determine the prudence of any purchase of electric energy pursuant to that agreement.

"(3) Paragraph (2) shall not apply to: (A) the purchase of electric energy at wholesale by an affiliate of a registered holding company from an exempt wholesale generator; or (B) the purchase of electric energy at wholesale by an affiliate of a registered holding company from a person other than an exempt wholesale generator when the economic substance of such purchase amounts to an indirect purchase of electric energy from an exempt wholesale generator. For purposes of this subsection (d), energy purchased by an affiliate of a registered holding company as a result of the operation of an in-

tegrated holding company shall not be deemed to be an indirect purchase of electric energy from an exempt wholesale generator.

"(4) For purposes of this subsection the term—

"(A) 'exempt wholesale generator' has the same meaning as provided in title XV of the National Energy Security Act of 1991;

"(B) 'affiliate' and 'registered holding company' have the same meanings as provided in the Public Utility Holding Company Act of 1935;

"(C) 'purchase of electric energy at wholesale' means a purchase of electric energy by any person for resale; and

"(D) 'retail rates' means rates and charges for the sale of electric energy to consumers."

SEC. 15107. STATE CONSIDERATION OF THE EFFECTS OF POWER PURCHASES ON UTILITY COST OF CAPITAL; CONSIDERATION OF THE EFFECTS OF LEVERAGED CAPITAL STRUCTURES ON THE RELIABILITY OF WHOLESALE POWER SELLERS; AND CONSIDERATION OF ADEQUATE FUEL SUPPLIES.—The Public Utility Regulatory Policies Act of 1978 (Public Law 95-617), as amended, is further amended by inserting the following new paragraph at the end of section 111:

"(8) Consideration of the Effects of Wholesale Power Purchases on Utility Cost of Capital; Effects of Leveraged Capital Structures on the Reliability of Wholesale Power Sellers; and Assurance of Adequate Fuel Supplies.—

"(A) To the extent that a State regulatory authority requires or allows electric utilities for which it has ratemaking authority to consider the purchase of long-term wholesale power supplies as a means of meeting incremental electric demand, such authority shall:

"(i) perform a general evaluation of the potential for increases or decreases in the costs of capital for such utilities, and any resulting increases or decreases in the retail rates paid by electric consumers, that may result from purchases of long-term wholesale power supplies in lieu of the construction of new generation facilities by such utilities;

"(ii) perform a general evaluation of any negative or positive effects on the reliability of electric service provided by such utilities that may result from purchases of long term wholesale power supplies from sellers that have capital structures which employ proportionally greater amounts of debt than the capital structures of such utilities;

"(iii) consider whether the use by exempt wholesale generators (as defined in title XV of the National Energy Security Act of 1991) of capital structures employing less than 35 percent equity threatens reliability or provides an unfair advantage for exempt wholesale generators over such utilities;

"(iv) implement procedures for the advance approval or disapproval of the purchase of a particular long term wholesale power supply which procedures reflect the results of evaluations under clauses (i), (ii) and (iii); and

"(v) require as a condition for the approval of the purchase of a particular long term wholesale power supply that the seller have, and continue to have, access to sources of fuel on terms and conditions adequate to provide reasonable assurance of the seller's ability to perform its obligations under the terms of the contract for the sale of such power supply.

"(B) For purposes of implementing the provisions of this paragraph, any reference contained in this title to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of the National Energy Security Act of 1991."

SEC. 15108. STATE COMMISSION ACCESS TO EWG BOOKS AND REOCRDS.—(a) REQUIREMENT TO PROVIDE BOOKS AND RECORDS.—Before commencing any sale of electric energy to an electric utility company, an exempt wholesale generator shall make available to each affected State commission relevant financial and other records of the exempt wholesale generator. The records to be provided hereunder shall be specified by the affected State commission and may include: (1) all books and records which the exempt wholesale generator would be required to furnish under State law if such company were an electric utility company making retail sales subject to the jurisdiction of such affected State commission; (2) all contracts to which the exempt wholesale generator is a party relating to the financing, construction or operation of eligible facilities used to produce electric energy sold or to be sold by such exempt wholesale generator; and (3) any other records or information relevant to the exercise of such affected State commission's authority: *Provided*, That nothing in this section shall require an exempt wholesale generator to provide the records or information of any person other than such exempt wholesale generator. All records and information provided hereunder shall be open to public inspection, and shall be subject to subpoena and other process of law, to the same extent and in the same manner as comparable records and information of electric utility companies under applicable law: *Provided further*, That trade secrets and other sensitive commercial information shall be exempt from public disclosure or disclosure to potential competitors of such exempt wholesale generator by an affected State commission and shall not be provided to a State commission unless such commission has in place procedures for protecting the confidentiality of such information.

(b) AFFECTED STATE COMMISSION.—For purposes of this section, with respect to a particular exempt wholesale generator an "affected State commission" means any State commission:

(1) having authority over the retail rates of an electric utility company to which such exempt wholesale generator sells electric energy;

(2) having authority over the retail rates of an electric utility company which is an affiliate of such exempt wholesale generator; or

(3) having authority over the retail rates of an electric utility company which is an associate company of such exempt wholesale generator and which is a subsidiary company of a holding company that is exempt under section 3 of the Act.

(c) **NONPREEMPTION OF STATE LAW.**—Nothing in this section shall preempt applicable State law concerning the provision of records and other information.

TITLE XVI—STRATEGIC PETROLEUM RESERVE

SEC. 16101. OIL SECURITY PROTECTION.—(a) Title I of the Energy Policy and Conservation Act (Public Law 94-163; 42 U.S.C. 6201) is amended—

- (1) in section 152, by striking “and part C” and inserting in lieu thereof “, part C, and part D” in the material preceding paragraph (1);
- (2) by redesignating part D as part E;
- (3) by redesignating section 181 as section 191; and
- (4) by adding the following new part after part C:

“PART D—ADDITIONAL OIL SECURITY PROTECTION

“SHORT TITLE

“SEC. 181. This part may be cited as the ‘Strategic Petroleum Reserve Enhancement Act of 1991’.

“PURPOSES

“SEC. 182. The purposes of this part are to—

“(1) complete, at the earliest practicable date, storage of seven hundred and fifty million barrels of petroleum products in the Strategic Petroleum Reserve;

“(2) facilitate progress, as rapidly as practicable, toward establishment of a one billion barrel Strategic Petroleum Reserve;

“(3) authorize establishment of a Defense Petroleum Inventory of at least ten million barrels of petroleum products;

“(4) initiate, at the earliest practicable date, the acquisition of petroleum product pursuant to section 171 of the Energy Policy and Conservation Act of 1990;

“(5) acquire by purchase, exchange, or other arrangement, from one or more foreign governments, petroleum products for storage in the Strategic Petroleum Reserve or the Defense Petroleum Inventory; and

“(6) provide the President with broad and flexible authority to achieve these objectives.

“COMPLETION OF 750 MILLION BARREL RESERVE

“SEC. 183. (a) The President shall initiate such actions as are necessary to complete storage of seven hundred and fifty million barrels of petroleum products in the Strategic Petroleum Reserve at the earliest practicable time. Such actions may include the alternatives in section 185.

“ENLARGEMENT OF RESERVE BEYOND 750 MILLION BARRELS

“SEC. 184. The President shall initiate such actions as are necessary to enlarge the Strategic Petroleum Reserve to one billion barrels as rapidly as possible. Such actions may include—

- “(1) either of the alternatives described in section 185; and

"(2) the contracting for petroleum products for storage in facilities not owned by the United States.

"ACQUISITION OF PETROLEUM PRODUCTS

"SEC. 185. (a) The President, acting through the Secretary of Energy, may—

"(1) acquire by purchase, exchange, or other arrangement, from one or more foreign governments, without the necessity for competitive procurement, petroleum products for storage in the Strategic Petroleum Reserve or the Defense Petroleum Inventory; and

"(2) contract, without regard to sections 171(b)(2)(B) and 173 of the Energy Policy and Conservation Act (42 U.S.C. 6349(b)(2)(B)), or to the restrictions which Public Law 101-512 imposes on the leasing of crude oil, for storage in the Strategic Petroleum Reserve or the Defense Petroleum Inventory of petroleum products owned by one or more foreign governments.

"(b) The Secretary may utilize such funds as are available in the SPR Petroleum Account to carry out the activities described in subsection (a), and may obligate and expend such funds to carry out those activities, in advance of the receipt of petroleum products.

"(c) For the purpose of this part, the term 'foreign government' means a foreign government, a foreign State-owned oil company, or an agent of either."

(b) Part B of title I of the Energy Policy and Conservation Act (Public Law 94-163; 42 U.S.C. 6215 et seq.) is amended by adding after section 167 the following new section:

"DEFENSE PETROLEUM INVENTORY

"SEC. 168. (a) Notwithstanding any other provision of this part, the Secretary may—

"(1) acquire or construct, operate and maintain storage and facilities associated with a Defense Petroleum Inventory of at least ten million barrels of crude oil to meet petroleum product requirements of the Department of Defense; and

"(2) acquire and store crude oil therein.

"(b)(1) The acquisition and storage of crude oil in the Defense Petroleum Inventory shall be in addition to any acquisition or storage of crude oil for the Strategic Petroleum Reserve required by any other law, and crude oil acquired and stored under this section shall not be counted as part of the Strategic Petroleum Reserve.

"(2) In carrying out the functions authorized by this section, the Secretary may exercise any authority available under this part.

"(c)(1) Notwithstanding any other provision of this part, upon the request of the Secretary of Defense, crude oil acquired for or dedicated by the Defense Petroleum Inventory shall be drawn down and distributed by the Secretary to, or on behalf of, the Department of Defense for use, sale, or exchange. Crude oil in the Defense Petroleum Inventory may be drawn down and distributed, used, sold, or exchanged, without regard to—

"(A) whether the crude oil has been commingled with petroleum products of the Strategic Petroleum Reserve;

"(B) the requirements of this part concerning drawdown of the Strategic Petroleum Reserve; or

"(C) otherwise applicable Federal contracting statutes and regulations.

"(2) The Secretary of Energy shall exercise the authority provided by this subsection in a manner which does not adversely affect drawdown of the Strategic Petroleum Reserve.

"(d) Upon the request of the Secretary of Defense, and subject to the availability of funds from the Department of Defense, the Secretary shall acquire and store in the Defense Petroleum Inventory crude oil to replace crude oil drawn down under subsection (c).

"(e) An amendment to the Strategic Petroleum Reserve Plan relating to the exercise of this authority shall not be required.

"(f) The Department of Defense shall reimburse the Secretary of Energy for—

"(1) all costs of acquiring and storing crude oil in the Defense Petroleum Inventory, including the cost of associated facilities construction;

"(2) drawdown and distribution services provided under this section, in amounts that the Secretary determines to be reasonable; and

"(3) all costs of acquiring crude oil for the Strategic Petroleum Reserve to replace crude oil drawn down and distributed under subsection (c).

"(g) Crude oil acquired for the Defense Petroleum Inventory under subsection (a) shall be transferred to the Strategic Petroleum Reserve, pursuant to subsection (f)(3), in reimbursement on a barrel-for-barrel basis for the cost of replacement petroleum products acquired for the Strategic Petroleum Reserve."

(c) The table of contents of the Energy Policy and Conservation Act (Public Law 94-163) is amended—

(1) by inserting after the item for section 167 the following item:

"Sec. 168. Defense Petroleum Inventory.";

(2) by inserting at the end of the items for part C of Title I the following items:

"PART D—ADDITIONAL OIL SECURITY PROTECTION

"Sec. 181. Short title.

"Sec. 182. Purposes.

"Sec. 183. Completion of 750 million barrel reserve.

"Sec. 184. Enlargement of reserve beyond 750 million barrels.

"Sec. 185. Acquisition of petroleum products.";

(3) by redesignating Part D in the items for title I as part E; and

(4) by redesignating the item for section 181 as the item for section 191.

PURPOSE OF THE MEASURE

The purposes of this measure are to: (1) slow the Nation's increasing dependence on imported oil over the short-term, and in the long-term significantly reduce its dependence on imported energy; (2) reduce the consumption of oil in the transportation

sector; (3) encourage the development and use of alternative energy sources for transportation; (4) encourage development and deployment of renewable energy sources in the United States and on an international basis in lesser-developed countries; (5) streamline the hydroelectric licensing process and encourage hydroelectric development at existing Federal dams; (6) encourage more efficient use of energy throughout the economy, including improvements in the industrial, commercial, residential and transportation sectors; (7) encourage more efficiency in the use of energy by the Federal Government; (8) encourage least cost planning by electric utilities; (9) provide for oil and gas exploration, production and development in the Arctic National Wildlife Refuge in Alaska in an environmentally sound manner; (10) strengthen the nuclear power option for the United States by providing for standardized advanced light water reactor designs, commercialization of advanced nuclear reactor technologies, and improving the nuclear reactor licensing process; (11) enhance the competitive position of the Federal uranium enrichment enterprise; (12) encourage increased utilization of natural gas and other domestic energy resources to displace imported oil and meet domestic energy demand in a manner consistent with environmental values; (13) encourage the development of domestic energy resources on the Outer Continental Shelf; (14) establish priorities for Federal energy research, development, demonstration, and, particularly, commercialization activities; (15) encourage enhanced oil and gas recovery from known and producing domestic reserves; (16) enhance the role of coal and clean coal technology in meeting the Nation's energy needs; (17) foster competition in the electric utility industry; and (18) provide enhanced oil security protection through the Strategic Petroleum Reserve.

BACKGROUND AND NEED

BACKGROUND

For two decades the Executive Branch and Congress have worked hard in a bipartisan manner to develop policies and programs to foster energy security. This effort has usually focused on the dependence of the United States on imported oil, but many other approaches aimed at improving the energy situation of the United States have been studied and discussed. Over the years hundreds of bills and amendments have been proposed to deal with one or another energy concern. Many have been enacted. Large appropriations for energy programs have been voted by each Congress since the oil embargo of October 1973.

Despite these good intentions and a tremendous amount of effort, the Nation continues to function with an energy policy that is less than optimum. A comprehensive approach to energy problems, considering the ramifications for environmental, economic, and tax policy, has eluded the political system. This has been the case, in part, because of the deeply embedded nature of patterns of energy use in our domestic economy and the long time frames associated with changes in these practices.

During most of this period, political consensus on the nature of energy problems has also been difficult to achieve. The will to make significant changes in the way energy resources are obtained,

processed and used in the United States seems present only in those times when some significant event reminds the public and their representatives of the need to address these issues. Embargoes, shortages, price spikes and environmental disruptions have galvanized action to develop and implement energy solutions in the past. In 1973 an embargo of oil exports to the United States imposed by the Arab members of the Organization of Petroleum Exporting Countries placed energy near the top of the Nation's political agenda. In 1979 the revolution that brought the Ayatollah Khomeini to power in Iran returned energy concerns to public attention. Today new force is being lent to energy policy concerns by the recent events in the Persian Gulf.

Focus on the Persian Gulf

On August 2, 1990, the armed forces of Iraq crossed into the territory of neighboring Kuwait. The Iraqi army moved rapidly to occupy the country and shut down virtually all Kuwaiti oil production of 1.8 million barrels per day. The Iraqi advance produced instant speculation that nearby Saudi Arabian oil fields, then producing 5.5 million barrels per day, would be the next target. An embargo on imports of Iraqi oil decreed by the United Nations removed an additional 2.5 million barrels of oil per day from the world market.

World oil prices, which had fallen to \$13 per barrel in June 1990, rose to \$36 per barrel in September 1990. The weight of this sudden surtax on consumers tipped the United States economy into recession.

Far more significantly, by January 1991, the United States had committed approximately 500,000 troops as part of the United Nations forces poised to recapture Kuwait from the Iraqis. The short, bloody war to reclaim Kuwait that broke out on January 15 represented the first direct involvement of United States land forces in the Persian Gulf to oppose military aggression aimed at least in part at oil supplies. One hundred and forty-one Americans lost their lives in the Persian Gulf war and another 330 were wounded. Thousands of Kuwaitis and Iraqis also lost their lives, and the political situation in the region today can at best be described as unsettled.

The Role of Persian Gulf Oil

The Persian Gulf is vital to the economy of the rest of the world because of the world's dependence on oil as a source of energy and because of the pivotal role of Persian Gulf nations in world oil markets. The dependence of the world on Persian Gulf oil supplies is a fact of life. The largest reserves of oil—66 percent of the world total—are located in the Persian Gulf countries. Moreover, this is the cheapest oil in the world to produce. All forecasts for the next two decades show oil production in the Persian Gulf increasing, while the decline in production in the United States, the North Sea, and the Soviet Union accelerates. Under business as usual, the United States, dependent on imports for 42 percent of its oil in 1990, is headed for levels of dependence of 60 to 75 percent in the next two decades.

Increased dependence on oil imports means, inevitably, increased dependence on the nations of the Persian Gulf. The potential for economic disruption and war in the event of interruptions in Persian Gulf supplies will increase. This threat gives rise to the global political aspect of energy policy.

If the projected United States dependence on Persian Gulf oil materializes, not only will the probability of economic disruption and war increase, but policies available to the United States to deal with political turmoil in the world, including the mideast, will be affected. A United States that is massively dependent on imported oil will be forced into a new relationship with the nations of the Persian Gulf.

This has already happened to other industrialized nations that are highly dependent on oil. Japan and Western Europe have levels of oil dependence above 60 percent, and the policies of these nations towards the mideast reflect the realities of their need for oil. Different strategies of coping have been adopted. For example, the Japanese willingly pay premium prices for oil, when asked, in order to ensure supplies, invest heavily in the mideast and are quite deferential in their dealings with Persian Gulf nations. The French have converted almost their entire electric system to nuclear power to avoid use of oil in power generation and, until recently, sought a close political and economic relationship with Iraq.

The flexibility of United States foreign policy in the Persian Gulf has been enhanced by our substantial domestic energy resources, but that flexibility may be reduced significantly over the coming years as oil imports and payments for those imports grow to unprecedented levels.

Efforts at Limiting Dependence

In response to the two previous oil supply disruptions and price shocks—in 1973–74 and in 1979—the United States struggled to develop policies to increase United States energy security and reduce dependence on imported oil. President Nixon proposed Project Independence, which was supposed to reduce oil imports to zero by 1980. President Ford worked to translate this program into the first comprehensive energy legislation submitted by a President to Congress. President Carter put forth his own comprehensive National Energy Act a few weeks after his inauguration. The National Energy Act became law as did a second major energy bill, the Energy Security Act.

During the Reagan Administration many of the programs and policies developed during this period were repealed, denied funds or simply not implemented. Oil imports also increased and domestic oil production declined. After the collapse of world oil prices in 1986 much of the impetus went out of Federal efforts to encourage domestic energy production, increase energy efficiency, develop alternative energy sources, or reduce oil imports.

All progress that had been made in improving United States energy security was not lost. The United States Strategic Petroleum Reserve was filled to more than 500 million barrels of oil during the 1980s. Efficiencies built into the domestic economy in response to the experience of the 1970s could not have been re-

versed even if that was desirable. However, the pace of energy efficiency gains slowed.

Other trends tended to reduce United States energy security. For example, between 1987 and 1990 the average fuel economy of the fleet of new passenger cars and light trucks sold in the United States actually declined. After years of Congressionally-imposed moratoria on leasing of various areas of the Outer Continental Shelf (OCS) for oil exploration, President Bush, as a matter of Administration policy, banned leasing until after the year 2000 for large portions of the OCS. The desire of the public for secure energy supplies did not disappear, but the need to act to reduce oil imports was not evident in the national political agenda.

The situation changed dramatically with the invasion of Kuwait. In response to the third energy crisis in 18 years, several Members of the 102d Congress proposed legislation to address United States energy security and its oil import dependence. In February, the Senate Committee on Energy and Natural Resources began consideration of its comprehensive energy policy bill, S.341, introduced by Senators Johnston and Wallop. On March 4 President Bush presented Congress with his own version of a comprehensive energy bill, S. 570. The President's proposal was based on the results of the Department of Energy's National Energy Strategy (NES) process, which for 18 months had been assembling and systematically analyzing the energy options recommended by a broad array of interests.

The purpose of each of these proposals was generally the same: to put in place programs and policies that would reduce oil imports through some combination of increased domestic production, increased efficiency in energy use and a transition to alternative fuels. The President's program sought to accomplish its import reduction goals through reform and streamlining of regulation of energy production and transportation and through a potentially far-reaching program of conversion of domestic automobile and light truck fleets to alternative fuels. The Johnston-Wallop bill and several other proposals added energy efficiency to the policy mix, including increased energy efficiency in the transportation sector through more stringent Federal regulation of the corporate average fuel economy (CAFE) of new vehicles sold.

Both the Johnston-Wallop bill and the President's program proposed leasing the Arctic National Wildlife Refuge (ANWR) for oil exploration. Other legislation proposed to designate the ANWR a wilderness where exploration for oil would be strictly prohibited. Bills were also introduced to stabilize energy prices domestically by setting a floor under domestic oil prices, and several proposals sought changes in the tax code to encourage energy efficiency and the development of renewable sources of energy.

As these proposals seem to indicate, a national energy policy must of necessity cover a broad range of energy issues: energy efficiency and energy production; conventional energy and alternative energy; renewable energy and nuclear energy. An effective energy policy will also of necessity be politically controversial.

A comprehensive energy policy will not overlook proposals that can increase the diversity of energy sources and reduce dependence on imported oil, whether through production of energy or increases

in the efficiency of energy use. A related truth in energy policy formulation is that no one energy initiative is capable by itself of dealing definitively with dependence on imported oil. Many different initiatives will be required to make a significant impact on the level of oil imports.

These considerations suggest that enactment of a national energy policy will require a legislative package of several energy initiatives. Such a package must also contain many different provisions if it is to be effective when implemented. To achieve political success any such package must also be balanced in the roles it assigns to sources of conventional energy production, alternative sources of energy and energy efficiency.

Energy proposals interact with the constraints imposed by environmental regulation and by the limited fiscal resources currently available to the Federal Government. Proposals submitted to the 102d Congress generally recognized the need for consistency with environmental law, including the landmark amendments to the Clean Air Act enacted in the 101st Congress. These proposals also recognized—or will be made in the budget and appropriations processes to recognize—the need to provide the new sources of funding needed to cover proposed expenditures.

Finally, a national energy policy must recognize that energy initiatives are only a means to an end, not an end in themselves. The aim of energy policy is to provide fuel and power for the economy and to ensure the well being of people. Energy policies must foster economic growth. Thus, the development of an effective national energy policy is an exercise in solving simultaneously through the political process the equations of energy, the economy and the environment.

Transportation use of oil

It is generally agreed that several major energy sectors offer opportunities for improving United States energy security and reducing oil imports.

Primary opportunities for oil import reduction exist in the transportation sector. The transportation sector uses 63 percent of the oil consumed in the United States. Automobiles and light trucks account for 40 of the 63 percentage points. No national energy program can ignore the potential for reducing oil consumed in these vehicles. Reductions in the amount of oil used in transportation can come from replacing oil as a fuel with alternative, non-oil substitutes or by increasing the efficiency with which the oil used is consumed.

One of the most effective and automatic ways to achieve efficiency and the substitution of alternative fuels in transportation is to increase gasoline prices. The price of gasoline today is lower than it was in 1973, assuming the 1973 price is adjusted for inflation. Thus, although the efficiency of new automobiles has doubled since that time, vehicle miles traveled has increased 45 percent, and today the Nation actually consumes more gasoline. There are more vehicles on the road and these vehicles are on average driven further.

The Federal tax on gasoline is 9.1 cents per gallon. The average State tax is 16.1 cents per gallon. Combined, these taxes add about 20 percent to the price of gasoline in the United States. The United

States has the lowest gasoline prices of any major oil consuming Nation in the world.

The Federal tax on gasoline is a matter within the jurisdiction of the Finance Committee of the United States Senate and the Ways and Means Committee of the United States House of Representatives. The President's and, indeed the public's, aversion to increases in gasoline taxes is well known. In this context, alternative means of achieving increased efficiency and substitution of non-oil fuels in transportation must be found. The principal alternative is increasing the levels of the Federal corporate average fuel economy (CAFE) standards.

However, it may not be easy to increase vehicle fuel efficiency through regulation. Improvements in automobile and light truck fuel efficiency may come at much greater cost than those achieved while the existing CAFE law was in effect. We have doubled new car fuel efficiency since 1975, but much of this was achieved with weight reduction. The next increases in efficiency will require new technologies and materials. These increases may be much more difficult to achieve than were the increases of the past decade and a half.

Congress has broad choices in vehicle fuel efficiency policy. Congress can set new statutory Federal CAFE standards that are "tough" and assume that the automobile industry will respond with the required technology and, if necessary, the required marketing techniques to sell the fuel efficient automobiles and trucks to the public. Or, Congress can set forth a process to evaluate the potential for fuel efficiency from technology that is capable of commercialization in the context of the economic realities of automobile and light truck markets. The aim of the process would be to arrive at new CAFE standards after an explicit and well-informed debate. Both kinds of proposals have been made to the 102d Congress.

Substitution of alternative transportation fuels such as natural gas, methanol, ethanol or electricity in the United States faces more difficult obstacles. Less than one percent of current automobile and truck transportation fuel use is provided by these alternatives today. Massive investments will be required to significantly increase the use of these fuels as substitutes for oil. Investments of this magnitude can only be expected to come over time, and the penetration of these fuels into the marketplace will necessarily be gradual. Investments will be required in fuel production capacity, in a nationwide distribution infrastructure and in the production of the very large number of vehicles capable of using the fuels. Providers of these investments will be aware that reduced oil prices could undercut the shift to alternative fuels at any time. This threat will tend to slow the rate of substitution of alternative fuels.

Even in the best of circumstances, a "chicken or egg" paradox operates. Fuel providers will not make the investments in production and distribution infrastructure until the vehicles are available to use the fuels. Vehicle manufacturers will not produce vehicles unless they know that the fuels will be available. An effective policy for alternative fuels as a replacement for oil imports must address both sides of the supply and demand relationship for these fuels simultaneously.

A comprehensive national energy policy must address oil use in the transportation sector. Even small improvements in energy efficiency in the transportation sector can have dramatic effects on oil consumption and imports.

Energy efficiency

Automobile fuel efficiency has been at the center of the energy debate over improving energy efficiency and promoting alternatives to oil use. However, many other opportunities to improve energy efficiency exist in other sectors of the economy.

Improvements in the efficiency of energy use in the United States have been dramatic since the oil shocks of the early 1970s. During this period, the notion that economic growth could not occur without commensurate growth in energy use was thoroughly discredited. Efficiency improvements have not only been critical in limiting oil imports relative to what they might have been, but have produced both significant gains in overall industrial productivity through lower production costs and improvements in environmental quality. Strides in energy efficiency have been made in all sectors of the economy and have resulted in a 25 percent decline between 1972 and 1987 in the amount of energy required to produce a dollar of gross national product (GNP).

In the residential sector, achievements in building design, materials, and appliance efficiency have kept growth in energy use in the residential sector to 3.5 percent since 1975, despite a 22 percent increase in the number of United States households. In the commercial sector, energy efficiency retrofits and improvements in building design have led to a 24 percent decrease in fossil energy use. And in the industrial sector, energy consumption per dollar of GNP has declined 20 percent since 1975.

The Department of Energy estimates that the United States has the potential to be saving by the year 2000 an additional 10 to 25 quads of energy annually. This is the energy equivalent of 5 to 12 million barrels of oil per day. To achieve these potentially enormous savings, existing energy efficiency technologies and those in the development stage would need to be fully used. There are formidable barriers to full use of these technologies built into the economy. Inadequate information and insufficient awareness, failures in delivery and implementation of new technologies, capital allocation and rate of return requirements, equipment turnover rates, and simple resistance to change limit our ability to reach this theoretical potential.

However, substantial opportunities exist to introduce many of these technologies and practices in energy management by the Federal Government, through integrated resource planning by electric utilities, and by the harnessing of market forces and permitting suppliers of energy efficiency services to earn profits from energy savings commensurate with the profit available from energy production.

A variety of regulatory and financial measures have been suggested to increase energy efficiency in the residential, commercial, and industrial sectors of the economy. These include energy efficiency standards and labeling standards for buildings and major energy-consuming equipment, improved information about energy

use and careful planning of energy resource acquisitions to include fair assessment of the potential for alternative energy sources and energy efficiency. Many of these measures are contemplated in existing law, and substantial progress can be made by either improving current programs or encouraging the expansion of programs that are too narrow in focus. In addition, it is necessary to recognize the crucial and often interrelated role that Federal and State governments, utilities, and the private sector must play in the development and execution of the energy efficiency and renewable energy programs.

Because of the apparent effectiveness of many institutional barriers to energy efficiency, it is especially important that the Federal Government maintain an enlightened and effective policy of encouraging the integration of energy efficiency into the domestic economy. Where possible, the Federal Government should take the lead in this effort.

Domestic oil production

Any national energy policy that attempts to address United States energy security and oil import dependence through improvements in energy efficiency and introduction of alternative energy sources must also concern itself with the potential for increasing the production of conventional oil from domestic sources. Each barrel of oil produced in the United States is a barrel that need not be imported.

United States oil imports are so massive and the use of oil is so ingrained in the United States economy that a substantial United States demand for oil will exist for the foreseeable future—at a minimum, certainly well into the early decades of the 21st century. This conclusion remains firm in the face of even the most optimistic assumptions about increases in energy efficiency and the substitution of alternative fuels. Unless domestic oil production is vigorously fostered throughout the necessarily long transition period during which the technologies to reduce oil use are being phased in, oil imports will continue to rise, and rise significantly.

No credible analytical evidence suggests that we can trade higher fuel efficiency and programs to encourage alternative energy for expanded supplies of oil. Rather, the choice year by year for many years to come will be between domestic production and increasing imports in order to supply the substantial United States oil demand that will remain even assuming that efficiency gains and substitution of alternative sources of energy have realized their potential at the time.

Primary prospects for exploration for domestic oil are the OCS and the Coastal Plain of ANWR.

The President has taken large portions of the OCS out of the Federal leasing program until after the year 2000. Barring a change in Presidential policy, the opportunity to increase domestic oil production from the OCS is very limited.

There has been a long-standing interest in potential oil resources in Alaska, including the ANWR Coastal Plain. The President's National Energy Strategy proposes the leasing of the Coastal Plain for oil and natural gas exploration and development. This area is the most highly prospective onshore oil and gas area remaining in the

United States. It is located only 65 miles to the east of the Prudhoe Bay oil fields that currently account for almost 25 percent of total United States domestic oil production.

The potential of this area is indeed significant. The mean estimate of oil thought to be recoverable from the Coastal Plain of the ANWR is 3.6 billion barrels. The range of estimated economically recoverable reserves runs from 400 million barrels to over 9 billion barrels. Only two other oil fields ever discovered in the United States, Prudhoe Bay and East Texas, have contained more than 3.6 billion barrels of recoverable oil. The probability of discovery of economically recoverable oil has been estimated by the Bureau of Land Management of the Department of the Interior at 46 percent. The oil industry routinely considers probabilities of discovery in the range of 10 percent worth the payment of substantial bonuses for the right to explore for oil.

Without question, this strip of land, 100 miles long and 30 miles wide, represents the best chance we have to increase our domestic oil reserves.

There is considerable opposition to opening the Coastal Plain of the ANWR to oil and gas leasing. Many arguments based on environmental and wilderness values have been advanced in opposition to developing the area. Much study has been devoted to the issues raised by opponents of exploration of the ANWR. In the twenty years since the facilities at Prudhoe Bay were designed and constructed, the technology and environmental sensitivity of oil field development in the Arctic have steadily evolved and improved. These technologies and improved practice and regulation are in place to address legitimate concerns and to ensure that the Coastal Plain will be developed in an environmentally sound manner. There is a broad consensus on the need to strike a balance between our national security interest in additional oil reserves and the significant fish, wildlife, subsistence and other values present on the Coastal Plain.

Such a balance is surely possible. There is overwhelming confidence in the State and especially among the Natives living on the North Slope of Alaska that a reasonable balance can be achieved. The United States Fish and Wildlife Service, based on extensive study and analysis, strongly believes the vegetation and the wildlife inhabiting the Coastal Plain can be protected and the significant values it possesses preserved consistent with the oil development program contemplated.

Although human presence in the Coastal Plain has been relatively light, there has been, and continues to be, evidence of man in the area. There have been three Distant Early Warning stations (one still active), there is a native village, Kaktovik, which has been relocated three times in recent history, and there has been, and continues to be, considerable subsistence activities in the area.

Lastly, there is little that is biologically unique about the area proposed for leasing in relation to other parts of the Arctic coastal region. Many of the landforms and biological resources found in the Coastal Plain are found on adjacent lands, including the almost 450,000 acres of congressionally-designated wilderness between the ANWR Coastal Plain and the Canadian border.

In addition to the substantial amounts of new oil production from the Coastal Plain of the ANWR that may be available to reduce oil imports, the Federal share of ANWR revenues—estimated at as much as \$1.5 billion from leasing bonuses alone—could provide substantial new resources for energy-related programs and projects designed to further enhance the Nation's energy security and reduce reliance on imported oil. Should oil be discovered and produced from the ANWR, a steady stream of substantial royalty income will accrue to the Federal treasury for many years to come. Inclusion of authority to lease portions of the Coastal Plain for oil exploration as part of a comprehensive national energy package makes it appropriate to require that any new Federal revenues generated from leasing in the ANWR should be made available for these types of projects.

In the past when opening of the ANWR has been considered, many opponents of leasing on the Coastal Plain have argued that simply looking for and developing new sources of oil are not enough. What is needed, it has been said, is a comprehensive approach which treats increased energy production as but a single component of a broader energy strategy; one that includes conservation and fuel efficiency initiatives, alternative energy programs, and other short and long range solutions. These arguments reinforce the importance of considering leasing proposals for the ANWR in the context of a broad-based national energy policy.

Oil from Prudhoe Bay now constitutes a fourth of our domestic supply, but will soon begin an inevitable and irreversible decline. We simply must find out what lies in geologically similar underground formations in the ANWR right next to Prudhoe Bay. It is difficult to see how we can be willing to send troops to fight in the Persian Gulf, but not be willing to explore our most promising prospect for domestic oil.

Electricity

Electrification of the economy has increased since the 1970s, and, unlike gross energy consumption, the consumption of electricity has closely tracked economic growth. This trend is expected to continue in the future.

The issues the Nation confronts in meeting future electricity demand are complex and different than those related to the use of other forms of energy. Regulation, along with research and development, will profoundly affect the future of the electric utility industry. As in no other energy sector, decisions on potential statutory and regulatory reform in electricity generation will require close coordination between State and Federal Governments.

No single technology or fuel will fulfill all future requirements for electricity generation. Renewable energy will play an increasingly important role in meeting capacity needs, especially peak load needs, provided the process of acquiring new electric energy resources is made sufficiently flexible and even handed. Expanded supplies of electricity generated from renewable energy will be available for the longer term if research and development and cooperative commercialization efforts succeed in reducing costs and increasing performance and reliability. Baseload electric capacity needs over the next twenty years are likely to be met primarily by

scrubbed coal, clean coal technologies, natural gas combined cycle technology and, perhaps, advanced nuclear reactors. The role of the Federal government will be to support technology development and commercialization and remove barriers to the efficient use and wide availability of diverse electric supply and conservation options.

One important initiative in assuring the availability of such a diverse array of options is removal of the obstacles to independent electric power production contained in the Public Utility Holding Company Act of 1935 (PUHCA). The effect of this change would be to allow independent power producers (IPPs) to compete in wholesale power markets as a new supply option. It would help to ensure that electric generation is provided to consumers in the most efficient way possible.

For practical and financial reasons, anyone that intends to develop an independent power project (utility or non-utility) must generally create a separate corporate entity to do so. In turn, the developing party becomes a holding company. PUHCA, however, places extensive restrictions on the use of holding companies in electric generation. Without changes to the Act, many opportunities for independent power production are therefore precluded. Legislation is needed to modify the Act so as to remove the limitation on the use of holding companies for independent power production. The effect of such legislation would be to create new electric supply options by facilitating the already growing competition in wholesale power generation.

One essential electric supply option whose availability is inextricably linked to Federal policy is the nuclear option. Today we have a de facto moratorium on nuclear power development in this country, despite the fact that nuclear power is capable of producing electricity cheaply and with negligible impact on the atmosphere.

Nuclear power must remain an energy option. Over 20 percent of our electricity comes from nuclear power plants. Nuclear energy displaces about 740,000 barrels of oil every day, about the same amount as we imported from Iraq and Kuwait before the invasion last August. The Federal Government controls many of the key variables that determine the quality and availability to the Nation's electric utilities of nuclear technology, including the prospects for improved siting, licensing, and financing systems for commercial deployment of new advanced reactor technologies that are safer, less costly, and easier to build and operate than the present generation of plants.

It is very important that the current hiatus in deployment of baseload electric generation be productively used to resolve any public concerns with the safety and cost of nuclear technology, by improvements in existing reactor technology or by developing new technology, so that nuclear power can receive fair treatment as a baseload electric supply option when such new supplies are needed. To ensure this availability, the regulatory scheme governing nuclear power needs to be addressed.

For several years experts in energy policy and nuclear power technology, the Nation's utilities, many potential consumers of nuclear power, and the Nuclear Regulatory Commission (NRC) have urged Congress to reform the current cumbersome process used to

license the construction and operation of nuclear power plants. This reform would require resolution of all safety issues before construction of a nuclear power plant begins and limit any licensing hearing after the plant is built to the question of whether the plant as built conforms with the license. Last November, the United States Court of Appeals for the District of Columbia Circuit upheld most of a Commission rule accomplishing this, but struck down the all-important provision restricting the post-construction hearing to conformance questions.

The NRC asked the court to rehear the case, and on March 27, 1991, the court agreed. The purpose of legislating at this time is to affirm the view of Congress that the Commission has full authority to issue combined construction and operating licenses and to remove any uncertainty about whether the combined license procedure will be available in a timely fashion to future applicants to the Commission.

The Nation needs to take a fresh look at nuclear energy's potential to provide electricity in a future that is concerned not only with energy security and oil dependence, but also with limiting emissions of NO₂, SO₂ and CO₂ into the atmosphere. A comprehensive national energy policy must take a position on the role of this electric supply option in the future.

Another important option that can contribute new supplies of electric energy while reducing emissions is the retrofitting and repowering of existing electric power plants. Unfortunately, current regulatory practice by the Environmental Protection Agency (EPA) may be preventing modifications that could result in significant improvement in both energy production and environmental performance at these facilities. The issue is when such a physical change at an existing stationary source results in an increase in emissions triggering new source requirements under the Clean Air Act. The EPA's interpretation of existing law has created a considerable disincentive for electric utilities and others to make physical changes at their facilities, including changes to reduce emissions, improve efficiency and reliability, and facilitate fuel switching. The litigation that has become the name for this issue is the WEPCo case (*Wisconsin Electric Power Co. v. Reilly*, 893 F.2d 901 (7th Cir. 1990)).

EPA Administrator Reilly has committed to the White House that his agency would attempt to remove these disincentives where it is appropriate to do so to the extent permitted under existing law. However, the Administration's "WEPCo fix" may require new statutory authority. If so, a legislative resolution of the matter is an appropriate and important component of a national electricity policy.

Natural gas

Natural gas is an abundant domestic fuel that is available at reasonable prices and can displace oil in many applications. Over 90 percent of the natural gas consumed in the United States is produced in the United States. Canada supplies almost all of our gas that is not produced domestically. Natural gas can displace imported oil in a variety of applications. Natural gas is clean burning and can make a major contribution to environmental quality. Natural

gas can fuel the combined cycle powerplants that will likely supply much of the new electric generating capacity that we will need in the near future.

The value of the contribution that natural gas can make to energy security and environmental improvement makes it important to remove as much as possible the regulatory barriers to natural gas achieving this potential. There is a general consensus that improvements can be made in the procedures of the Federal Energy Regulatory Commission for the construction of new natural gas pipeline facilities so as to encourage market entry in the pipeline business. Amendment to existing law is also needed to facilitate the use of natural gas as a fuel for automobiles and trucks. Certain activities related to the sale and distribution of natural gas as a vehicular fuel ought not cause local distribution companies currently exempt from Natural Gas Act jurisdiction to forfeit such exemptions.

Summary _

There is an opportunity to make progress towards increased energy security and lower oil imports in many areas of energy policy. There is also an opportunity to begin the longer term process of transition to fuels and sources of energy other than oil. This opportunity derives from the public attention currently being given to our energy situation and the willingness to consider changes that will improve that situation. To take advantage of this opportunity, Congress needs to assess the broadest range of energy options that can yield the import reduction and improved energy security that is appropriate and possible. The current energy situation may seem comfortable to many Americans. Changes are therefore not always easy to make. However, as a Nation we are sowing the seeds of great difficulty for the future with our growing dependence on imported oil, our slowing pace in improving energy efficiency, our deteriorating base of domestic energy production and our ambivalence towards alternative sources of energy. The public seems to realize this, and this realization could provide the basis for bold action by Congress. But leadership will be required. We see in very stark terms the cost of inaction in the casualty figures from the Persian Gulf war.

We simply must act to replace an energy policy that is evidently ineffective in the face of rising oil imports with a policy that fosters energy security and eliminates the need to deploy military forces to assure the supplies of energy our economy requires. The opportunity to make sweeping changes in energy policy comes only infrequently. The 102d Congress is meeting during such a time. Past attempts to forge an effective national energy policy are recent enough that we have a good appreciation of what will work and what won't. We simply need the political will to meet the challenge of leadership and do what needs to be done.

LEGISLATIVE HISTORY

On February 5, 1991, Senators Johnston and Wallop introduced S. 341, a bill to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation, and for other pur-

poses. Committee hearings were conducted on this measure on: February 21, 26, 28; March 5, 7, 11, 12, 14, 18, 19, 20, 21, and April 3. (S. Hrg. 102-5, Parts 1-16; S. Hrg. 102-24; S. Hrg. 102-30; S. Hrg. 102-57).

The Committee met in open business sessions to consider S. 341 on: April 16, 17, 18, 23, 24; May 8, 9, 14, 15, 16, 21, 22, and 23.

At a business meeting on May 23, the Senate Committee on Energy and Natural Resources ordered an original bill favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on May 23, 1991, by a majority vote of a quorum present, recommends that the Senate pass the bill as described herein.

The rollcall vote on reporting the measure was 17 yeas, 3 nays, as follows:

YEAS

Mr. Johnston
Mr. Ford
Mr. Bingaman*
Mr. Wirth
Mr. Conrad
Mr. Akaka
Mr. Fowler*
Mr. Shelby*
Mr. Wallop
Mr. Hatfield*
Mr. Domenici
Mr. Murkowski
Mr. Nickles
Mr. Burns*
Mr. Craig
Mr. Seymour
Mr. Garn*

NAYS

Mr. Bumpers
Mr. Bradley
Mr. Wellstone

*Indicates voted by proxy.

SECTION-BY-SECTION ANALYSIS

Section 1

This section sets forth the table of contents and short title.

Title I—Findings and Purposes

SUBTITLE A—FINDINGS AND PURPOSES

Section 1101

This section sets forth congressional findings.

Section 1102

This section sets forth the purposes of the legislation.

SUBTITLE B—GOALS, LEAST-COST ENERGY STRATEGY, AND DIRECTOR OF CLIMATE PROTECTION

This subtitle requires the Secretary of Energy to develop a least-cost energy strategy as one of the strategies to be followed to achieve the objectives of the National Energy Policy Plan submitted under section 801 of the Department of Energy Organization Act.

Section 1201

Subsection (a) of this section sets forth the goals of the subtitle, which are to be addressed by the least-cost energy strategy required under section 1202.

Subsection (b) contains a non-exclusive list of the kinds of policies to be considered by the Secretary in developing the least-cost strategy.

Subsection (c) sets forth what assumptions are to be made for the reduction of the generation of fluorocarbons when formulating the least-cost strategy.

Subsection (d) sets forth a goal of United States policy with respect to an international framework convention on global climate change. Nothing in this section affects the authority of the Federal Government to implement or not implement cost-effective measures to mitigate or adapt to global climate change without being a party to an international agreement or framework convention on global climate change.

Section 1202

Subsection (a) of this section requires the Secretary to include a least-cost energy strategy in each National Energy Policy Plan submitted by the President to Congress after the date of the enactment of this Act.

Subsection (b) sets forth requirements the Secretary is to follow in developing the strategy and matters that must be included in the strategy.

Subsection (c) provides additional matters the Secretary specifically is to consider in developing the strategy.

Section 1203

This section requires the Secretary to appoint a Director of Climate Protection and sets forth the duties of the Director. This section does not limit the authority of the Secretary to manage global climate change activities within the Department in ways not covered by the section.

Section 1204

This section repeals title III of the Energy Security Act, which requires the Secretary to transmit to Congress targets for energy consumption, production and imports.

Title II—Definitions

Section 2101

This section sets forth definitions.

*Title III—Corporate Average Fuel Economy**Section 3101*

This section provides that Title III may be cited as the "Motor Vehicle Fuel Efficiency Act of 1991."

Section 3102

This section adds definitions of "light truck" and "vehicle class" to the definition section of the Motor Vehicle Information and Cost Savings Act (the MVICSA) (15 U.S.C. 2001). "Light trucks" is used in place of the term "automobiles which are not passenger automobiles" used in section 502(b) and elsewhere in the existing MVICSA and is defined to mean the same thing. The term encompasses pick-up trucks, mini-vans, and jeeps. "Vehicle class" is defined to mean either all passenger automobiles, all light trucks, or a class of light trucks.

Section 3103

This section amends section 502(a) of the MVICSA, which sets average fuel economy (CAFE) standards for passenger automobiles. Section 3103 amends section 502(a) as follows:

New section 502(a)(1) omits existing standards for model years 1978 through 1984, preserves existing standards for model years 1985 through 1995, and adds new ones for model years 1996 through 2001 and for 2002 and thereafter. The new standards are to be determined in accordance with new section 502(a)(2).

New section 502(a)(2) requires the Secretary of Transportation (for purposes of this title, the Secretary) to set individual CAFE standards for each manufacturer for model years 1996 through 2001 and for model year 2002 and thereafter. Subsection (a)(2) of the current MVICSA, which requires the Secretary to prepare reports related to meeting the 1985 model year CAFE standard, is deleted as obsolete.

New section 502(a)(3) requires the Secretary to set CAFE standards at the "maximum feasible" level, which is determined under new subsection (d) (as amended by section 3106).

Subsections 502(a)(4) and (a)(5) of the existing MVICSA are deleted as unnecessary in light of new subsection (a)(3). (Subsection (a)(4) authorized the Secretary to set CAFE standards for the 1985 model year and thereafter at the maximum feasible level, notwithstanding the 27.5 miles-per-gallon level prescribed by existing law. Subsection (a)(5) prescribed the time in which Congress could veto the Secretary's new standards.)

Section 3104

This section amends section 502(b) of the existing MVICSA, which directs the Secretary to set CAFE standards for light trucks. Section 3104 amends section 502(b) as follows:

New section 502(b)(1) retains the Secretary's authority under existing subsection (b) to set maximum feasible CAFE standards for light trucks, but provides that the Secretary may exercise the existing authority only through model year 1995.

New section 502(b)(2) requires the Secretary to set individual CAFE standards for each manufacturer's light trucks for model years 1996 through 2001 and for 2002 and thereafter.

New section 502(b)(3) requires the Secretary to set CAFE standards at the "maximum feasible" level, which is determined under new subsection (d) (as amended by section 3106).

New section 502(b)(4) retains the Secretary's existing authority to set different CAFE standards for different classes of light trucks.

Section 3105

This section amends section 502(c) of the existing MVICSA. Section 502(c) now authorizes the Secretary to prescribe CAFE standards that are less stringent than those set in the statute for any manufacturer of less than 10,000 passenger automobiles that is unable to meet the statutory standard. Section 3105 permits the Secretary to use this authority only through model year 1995.

Section 3106

This section strikes section 502(d) of the existing MVICSA. Section 502(d) authorized the Secretary to amend CAFE standards for model years 1978, 1979, and 1980, and thus is obsolete. In its place, section 3106 adds a new section 502(d) that sets forth how the Secretary is to calculate the new CAFE standards that are called for in the new sections 502(a)(2) and 502(b)(2).

New section 502(d)(1) prescribes a method of calculating CAFE standards for individual manufacturers that requires each manufacturer to increase its average fuel economy by the same percentage of its current (1990 model year) CAFE level. Subsection (d)(1) does this by directing the Secretary to calculate the new CAFE standards for each manufacturer by:

(A) Determining the maximum feasible CAFE level for the entire vehicle class (i.e., all passenger automobiles, all light trucks, or all vehicles in a certain class of light trucks) under new section 502(e);

(B) Dividing the maximum feasible CAFE level for the vehicle class (determined under section 502(d)(1)(A)) by the average fuel economy of vehicles of that class manufactured in model year 1990 (determined under section 503 of the existing MVICSA); and

(C) Multiplying the quotient from section 502(d)(1)(B) by the average fuel economy of automobiles manufactured by each manufacturer in model year 1990 (determined under section 503).

New section 502(d)(2) allows the Secretary to apply different percentage increases (i.e., the quotient determined under subsection (d)(1)(B)) to different vehicle classes, but requires the Secretary to use the same percentage increase for each manufacturer of vehicles within the same class.

Section 3107

This section amends section 502(e) of the MVICSA. The current section 502(e) authorizes the Secretary to consider technological feasibility, economic practicability, the effect of other Federal

standards on fuel economy, and the need to save energy in determining maximum feasible CAFE levels.

New section 502(e)(1) retains the existing subsection (e) but limits its application to determining maximum feasible CAFE standards for pre-model year 1996 CAFE vehicles (i.e., CAFE standards set under sections 502(a)(1), 502(b)(1), and 502(c) as amended by sections 3103, 3104, and 3105, respectively).

New section 502(e)(2) prescribes certain assumptions the Secretary is to make in determining maximum feasible CAFE standards for model years 1996 and thereafter. These assumptions about the nature of future vehicle classes take the place of the considerations in subsection (e)(1). These assumptions are that, with respect to each vehicle class, vehicles—

(A) will use all known fuel-saving technologies that can be expected to be applied;

(B) will maintain model year 1990 performance levels;

(C) will maintain the size mix and interior volume of the 1990 model year;

(D) will meet applicable emission requirements; and

(E) will meet applicable safety standards.

Section 3108

This section makes conforming amendments to section 502(f) of the existing MVICSA. Section 502(f) permits the Secretary to change CAFE standards so long as the new standard requires manufacturers to meet the maximum feasible CAFE level.

Section 3109

This section makes a conforming amendment to section 502(h) of the existing MVICSA. Section 502(h) specifies that informal hearing procedures under the Administrative Procedure Act apply to proceedings to set or change CAFE standards under the MVICSA.

Section 3110

This section amends section 502(l) of the MVICSA to allow for credit trading. The current section 502(l) awards credits to manufacturers whose fuel economy exceeds the applicable CAFE standard. The amount of credits is equal to the number of tenths of a mile-per-gallon by which the manufacturer's average fuel economy (as measured by section 503) exceeds the applicable CAFE standard, multiplied by the total number of vehicles of the applicable class manufactured by the manufacturer during the applicable model year. These credits can then be used to offset the manufacturer's failure to meet applicable CAFE standards up to 3 years before or up to 3 years after the credit is earned.

Subsection 3110(a)

This subsection amends section 502(l)(1)(B)(ii) to provide that credits earned in model year 1996 and thereafter can be used indefinitely (instead of for just 3 years) to offset future failures to meet applicable standards.

Subsection 3110(b)

Paragraph (1) of this subsection strikes existing section 502(1)(3), which provides for the use of credits to reduce civil penalties. In its place, subsection (b)(1) adds a new paragraph (3) that permits manufacturers to trade credits with other manufacturers and among different vehicle classes of the same manufacturer. Paragraph (2) of the subsection augments the Secretary's existing rulemaking authority under section 502(1)(4) by directing the Secretary to adopt additional rules implementing the credit trading system.

Section 3111

This section clarifies how average fuel economy for light trucks is to be calculated. Existing section 503(a)(2) provides merely that the Secretary is to calculate light truck average fuel economy according to rules adopted by the Environmental Protection Agency. Section 3111 requires that these rules be based on the method prescribed in section 503(a)(1) for calculating average fuel economy for passenger automobiles.

Section 3112

This section amends current section 503(a) to provide a credit for manufacturers who install airbags in small passenger automobiles. Small passenger automobiles are defined as cars with: (i) either a wheelbase of less than 100 inches or a curb weight of 2,750 pounds or less; and (ii) a measured fuel economy of at least 35 miles per gallon.

Subsection 3112(a)

This subsection increases the fuel economy rating of small passenger automobiles equipped with a driver-side airbag by five percent and that of small passenger automobiles equipped with both driver-side and passenger-side airbags by 10 percent for purposes of calculating average fuel economy under existing section 503.

Subsection 3112(b)

This subsection provides that, for purposes of calculating the maximum feasible CAFE levels under section 502(e), the Secretary may not take into consideration the credit manufacturers can receive under section 3112(a) for installing airbags in small cars.

Section 3113

This section amends section 506(b) of the existing MVICSA. Section 506(b) now requires the Environmental Protection Agency to prepare, and the Department of Energy to distribute, each model year, a booklet on fuel economy.

Subsection 3113(a)

This subsection requires the Department of Energy to distribute at least 100 copies, and as many more as may reasonably be requested, to every automobile dealer each year.

Subsection 3113(b)

This subsection changes references to the "Federal Energy Administrator" in current law to the "Secretary of Energy."

Section 3114

This section provides financial incentives for meeting CAFE standards. Under section 507 of the existing MVICSA, failure to meet CAFE standards is unlawful and punishable by imposition of a civil penalty under existing section 508. Section 3114 strikes existing section 507 and, in its place, authorizes the Secretary to levy an "excessive fuel consumption fee" on manufacturers who fail to meet applicable CAFE standards. Section 3114 amends section 507 as follows:

New section 507(a) authorizes the Secretary to levy the excessive fuel consumption fee on manufacturers who fail to meet applicable CAFE standards in amounts provided by section 508 (as amended by section 3115).

New section 507(b) provides that the amount of the fee is to be assessed by written notice.

New section 507(c)(1) gives any manufacturer assessed a fee the right to request the Federal Trade Commission to review the effect of the fee on competition in the automobile industry. Subsection (c)(1) is intended to preserve with respect to imposition of the excessive fuel consumption fee the same rights a manufacturer now has with respect to the imposition of a civil penalty under current section 508(b)(4).

New section 507(c)(2) provides for repayment of all or part of any fee collected from a manufacturer while the Federal Trade Commission is reviewing the imposition of such fee if, upon completion of the Commission's review, the Secretary decides to reduce or eliminate the fee. Subsection (c)(2) is intended to preserve with respect to the imposition of the excessive fuel consumption fee the procedure for remitting civil penalties under current section 508(b)(5).

New section 507(d)(1) provides for judicial review of any fee assessed under subsection (a) or any Federal Trade Commission decision under subsection (c) in the Court of Appeals. Subsection (d)(1) is intended to provide the same right of judicial review of decisions resulting in the imposition of the excessive fuel consumption fee that current section 508(c)(1) now provides for civil penalties.

New section 507(d)(2) authorizes the Justice Department to file suit in Federal district court to recover any excessive fuel consumption fee if the manufacturer otherwise fails to pay it. The new subsection (d)(2) is intended to provide the same procedure for the collection of the excessive fuel consumption fee that current section 508(c)(2) now affords for collection of civil penalties.

New section 507(e) gives claims for excessive fuel consumption fees the same priority in bankruptcy proceedings that claims for civil penalties now possess under current section 508(b)(6).

Section 3115

This section strikes the first four subsections (but not subsection (e)) of the existing civil penalty provision, section 508. In their

place, section 3115 adds four new subsections that set forth how the excessive fuel consumption fee is to be calculated.

New section 508(a) establishes the amount of the fee for failure to meet applicable CAFE standards. Paragraph (1) applies to fees for failing to meet passenger car CAFE standards. Paragraph (2) applies to fees for failing to meet light truck CAFE standards. Both provide that the amount of the fee is determined by multiplying the following three numbers:

The number of tenths of a mile-per-gallon by which the manufacturer has failed to meet the applicable CAFE standard;

The number of vehicles in the applicable vehicle class manufactured by the manufacturer during the applicable model year; and

The amount of the base fee provided in the new subsection (b).

The resulting figure may be reduced by any credits the manufacturer has and elects to use.

New section 508(b) sets out the amount of the base fee used to calculate the excessive fuel consumption fee under subsection (a). Initially, the base fee is five dollars, which is the amount of the base civil penalty under existing section 508(b)(1). The base fee doubles to ten dollars in model year 1993 and it doubles again to twenty dollars in model year 1996. In each model year thereafter, the amount of the fee is adjusted to reflect inflation.

New section 508(c) gives the Secretary power to reduce the amount of the fee if—

Necessary to prevent insolvency or bankruptcy of the manufacturer;

Failure to meet the standard was beyond the manufacturer's control; or

The Federal Trade Commission certifies (under section 507(c), as amended by section 3114) that the fee would result in substantial harm to competition in the automobile industry.

The Secretary's authority to reduce fees under the new subsection (c) is coextensive with the Secretary's current authority to reduce civil penalties under the existing section 508(b)(3).

New section 508(d) gives the Secretary power to increase the amount of the base fee, up to twice the amount provided in new subsection (b), provided that any such increase will further energy conservation and will not substantially harm the economy of the Nation or of any state or region. The Secretary's authority to increase fees under new subsection (d) is coextensive with the Secretary's current authority to increase civil penalties under existing section 508(d). Any increase under this subsection must be accomplished through a rulemaking.

The legislation preserves existing section 508(e), which provides procedures for public notice, comment, and hearings on, and for judicial review of, any rule under subsection (d).

Section 3116

This section adds a new subsection (f) to section 508 of the MVICSA.

New section 508(f)(1) establishes a separate fund in the Treasury, in which the excessive fuel consumption fees collected under the new section will be deposited.

New section 508(f)(2) authorizes the Secretary of Energy, subject to appropriation, to use the funds deposited in the special fund to finance older vehicle scrappage programs under section 3117. To the extent money is available beyond what is needed for scrappage programs, it can be used to fund other energy conservation programs.

New section 508(f)(3) directs the Secretary of the Treasury to manage the fund, and to report to Congress on its status annually.

Section 3117

This section adds a new section 514 to the MVICSA.

New section 514(a) authorizes the Secretary of Energy to provide financial assistance to state programs designed to retire pre-1980 automobiles. This section is intended to remove the least energy efficient vehicles from use.

New section 514(b)(1) directs the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, to adopt rules necessary to review and approve state programs qualifying for assistance under section 514(a). Paragraph (2) requires that, to receive Federal assistance under this section, at least half of the cost of any program must be paid from state or private funds.

New section 514(c) authorizes the Secretary of Energy to use funds appropriated from the Excessive Fuel Consumption Fund established under section 508(f) (as amended by section 3116) for scrappage programs under this section.

Section 3118

This section makes technical and conforming changes to the MVICSA.

Title IV—Fleet and Alternative Fuels

SUBTITLE A—ALTERNATIVE FUEL FLEETS

In General

Subtitle A is based in part on the alternative fuel fleet provisions in the President's proposed National Energy Strategy Act (S.570). Subtitle A differs, however, from the President's proposal. Subtitle A places the primary emphasis of the alternative fuel program on Federal agency fleets. The President's bill did not apply to Federal agencies. The President has, however, by Executive Order, required Federal agencies to acquire "the maximum number [of alternative fuel vehicles] practicable." Subtitle A also imposes different purchase requirements on State and private fleet operators than those in the President's proposal.

Subtitle A is also based in part on the "clean fuel" fleet provisions in Title II, Part B of the Clean Air Act, which was added by section 229 of Pub. L. No. 101-549. The principal focus of the Clean Air Act fleet program, however, is the reduction of air pollution caused by motor vehicles in cities that violate Clean Air standards.

The principal focus of Subtitle A, on the other hand, is to encourage the widespread public use and acceptance of alternatives to crude oil derived motor vehicle fuels.

Accordingly, one of the principal differences between Subtitle A and the Clean Air Act fleet program is that reformulated gasoline and certain uses of diesel fuel do not qualify as alternative fuels under Subtitle A. In addition, Subtitle A covers fleets not only in the cities covered by the Clean Air Act fleet program but fleets in about 100 more cities as well. The Clean Air Act would affect smaller fleets (of as few as ten vehicles) than Subtitle A. In many other respects, however, Subtitle A has been drawn to conform to the Clean Air Act program. Nonetheless, the programs are independent. Persons subject to one may not be subject to the other; and compliance with one may not satisfy the requirements of the other.

Section 4101

This section defines terms used in Subtitle A.

Paragraph 4101(1)

This paragraph identifies the fuels that qualify as "alternative fuels" under Subtitle A. In general, "alternative fuels" under Subtitle A are the same as "clean alternative fuels" under section 241 of the Clean Air Act (as added by section 229 of Pub. L. No. 101-549) except that Subtitle A excludes reformulated gasoline and diesel and adds coal derived liquid fuels.

It is the Committee's intent to leave the selection of a particular type of alternative fuel to each fleet operator subject to this subtitle based upon the fleet operator's special requirements, the regional availability of different alternative fuels, the relative cost of different alternative fuels, and other considerations. The subtitle itself is intended to be neutral as among different alternative fuels.

Paragraph 4101(2)

This paragraph defines "alternative fuel vehicle" to include both dedicated vehicles, which can run only on one or more alternative fuels, and "flexi-fueled vehicles," as defined by paragraph (6).

Paragraph 4101(3)

This paragraph defines "diesel truck" as diesel-powered trucks weighing more than 8,500 pounds but less than 26,000 pounds gross vehicle weight. As used here "gross vehicle weight" is intended to have meaning given it by section 216(7) of the Clean Air Act (as added by section 223 of Pub. L. No. 101-549). Diesel-powered light-duty trucks and passenger automobiles would not be considered "diesel trucks" for purposes of section 4105(c) of Subtitle A. All trucks weighing 26,000 pounds or more, including those powered by diesel fuel, are exempt from Subtitle A under section 4101(7).

Paragraph 4101(4)

This paragraph defines "Federal agency" broadly to include any executive department, military department, government corporation, independent establishment, and executive agency, as those terms are used in 5 U.S.C. 101-105. In addition, "Federal agency"

is defined to include the United States Postal Service, the Congress, and the Federal Judiciary.

Paragraph 4101(5)

This paragraph defines "fleet" as a group of motor vehicles under common ownership that are capable of being centrally fueled. Paragraph (5) expressly excludes rental cars, car dealers' stock, test vehicles, police cars, ambulances, firetrucks, military combat vehicles, farm vehicles, construction vehicles, trucks weighing more than 26,000 pounds, and vehicles that are normally garaged at a personal residence overnight. Vehicles exempted from the definition of "fleet" by paragraph (5) would not be counted for purposes of determining whether a fleet owner has the requisite number of vehicles to trigger the application of section 4103 or 4104 of Subtitle A.

Paragraph (5) is intended to include the same types of vehicles included in the definitions of "covered fleet" and "covered fleet vehicle" under section 241 of the Clean Air Act (as added by section 229 of Pub. L. No. 101-549).

Paragraph 4101(6)

This paragraph defines "flexi-fueled vehicle" as a motor vehicle that is designed to run either on a conventional motor fuel (gasoline or diesel), one or more alternative fuels, or a combination of conventional or alternative fuels. Motor vehicles capable of operating on "gasohol" or other mixtures of gasoline and alcohol that contain less than 85 percent alcohol by volume would not be considered to be a "flexi-fuel vehicle" unless they are also capable of operating on an alternative fuel alone.

Paragraph 4101(7)

This defines "motor vehicle" to include any four-wheel vehicle propelled by an alternative or conventional fuel that is designed primarily for transporting persons or property on public streets, roads, and highways. The term includes cars, trucks (up to 26,000 pounds), and buses.

Paragraph 4101(8)

This defines "person" to include: (A) individuals, corporations, partnerships, and associations; and (B) municipalities and political subdivisions of a State. As used in the definition, "municipality" is intended to have the meaning given the term in 42 U.S.C. 7602(f). "Person" does not include a State or a Federal agency.

Paragraph 4101(9)

This paragraph narrows the scope of persons subject to Subtitle A by defining "covered person" to include only persons controlling:

(A) A fleet of 20 or more motor vehicles that are used primarily in a metropolitan statistical area or a consolidated metropolitan statistical area with a 1980 population of 250,000 or more; and

(B) At least 50 motor vehicles nationwide, which need not be capable of being centrally fueled or used in a metropolitan statistical area. It is intended that any vehicle excluded from the

definition of "fleet" under paragraph (5) would not be counted for purposes of establishing whether a person controls 50 or more vehicles under paragraph (9).

Paragraph 4101(10)

This paragraph defines "State" to include the 50 States and the District of Columbia. Territories of the United States are not included in the definition of "State" and are not subject to Subtitle A.

Section 4102

This section requires that, in time, nine out of every ten fleet vehicles owned or operated by any Federal agency will use alternative fuels.

Subsection 4102(a)

This subsection sets forth a schedule establishing the minimum percentage of fleet vehicles acquired by a Federal agency, during any given year that must be alternative fuel vehicles. In each of the following years, the following percentage of fleet vehicles acquired by any Federal agency must be alternative fuel vehicles:

	<i>Percent</i>
1995.....	10
1996.....	15
1997.....	25
1998.....	50
1999.....	75
2000 and each year thereafter.....	90

The percentage requirements apply to the General Services Administration with respect to the interagency motor pool operated by the General Services Administration and to each Federal agency with respect to any fleet vehicles acquired by the agency, whether through the General Services Administration or by the agency directly.

Motor vehicles that are excluded from the definition of a "fleet" under section 4101(5) would not count for purposes of establishing the percentage purchase requirements under section 4102.

Subsection 4102(b)

This subsection directs the Secretary of Energy to work with the Administrator of General Services and the head of each Federal agency to coordinate the Federal alternative fuel fleet program.

Subsection 4102(c)

This subsection directs the Administrator of General Services to arrange for the refueling of Federal alternative fuel fleet vehicles at public refueling facilities. Since one of the major purposes of Subtitle A is to encourage and facilitate the development of alternative fuel infrastructures, subsection (c) directs the Administrator to rely, to the maximum extent practicable, on facilities that are open to the public, rather than installing refueling facilities accessible only to Federal vehicles.

Subsection 4102(d)

This subsection seeks to pay the additional cost of alternative fuel vehicles compared to the cost of comparable conventional vehicles out of funds appropriated under subsection (g) rather than out of funds appropriated to individual agencies for other purposes. The General Services Administration operates an interagency fleet of about 130,000 vehicles that are used by over 75 Federal agencies throughout the country. Section 211 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 491) directs the General Services Administration collect from agencies served by the interagency pool payments that "recover, so far as practicable, all * * * elements of cost" of the motor vehicles furnished to the agencies. Subsection (d) provides that, to the extent any incremental cost of alternative fuel vehicles is covered by appropriations authorized by subsection (g), the General Services Administration should not recover such cost from the agencies using the vehicles.

Subsection (d) is identical to section 248(b) of the Clean Air Act (as added by section 229 of Pub. L. No. 101-549).

Subsection 4102(e)

This subsection provides that appropriated funds authorized by subsection (g) may only be used to pay for the incremental costs associated with alternative fuel vehicles over and above the cost of buying and operating conventionally fueled vehicles. Subsection (e) is identical to section 248(c) of the Clean Air Act.

Subsection 4102(f)

This subsection provides that the incremental cost of alternative fuel vehicles over conventionally fueled vehicles may not be considered when applying the limits contained in the Treasury, Postal Service and General Government Appropriations Act for Fiscal Year 1990 (Pub. L. No. 101-136) or in any subsequent legislation limiting the amount Federal agencies can pay for vehicles. Section 601 of Pub. L. No. 101-136 limits the amount that a Federal agency can pay for a passenger vehicle to \$7,100. Subsection (f) is identical to section 248(d) of the Clean Air Act.

Subsection 4102(g)

This subsection authorizes appropriations needed to carry out the Federal alternative fuel fleet program under section 4102. Funds appropriated pursuant to this authorization are to be placed in the General Supply Fund established by section 109 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 756). This Fund is administered by the General Services Administration and is currently used for the purchase of motor vehicles for Federal agency use. Subsection (g) is identical to section 248(g) of the Clean Air Act.

Section 4103

This section requires States to acquire alternative fuel vehicles for certain State fleets. Unlike section 4102, which requires all Federal agencies to acquire alternative fuel vehicles when acquiring "fleet" vehicles within the meaning of section 4101(5), section 4103

applies only to State fleets meeting three tests. First, the State must have at least 50 fleet vehicles statewide, even though all 50 may not be capable of being centrally fueled. For purposes of establishing this number, motor vehicles identified in section 4101(5)(A) through (H) would not be counted. Second, the State must have at least 20 fleet vehicles that are capable of being centrally fueled at one location. Third, the fleet of 20 or more vehicles that are capable of being centrally fueled must be used primarily in a metropolitan statistical area (or a consolidated metropolitan statistical area) with a 1980 Census population of 250,000 or more.

Any State meeting all three tests would be required to purchase alternative fuel vehicles for the fleet or fleets of 20 or more vehicles used within the qualifying metropolitan statistical area. The schedule for purchasing alternative fuel vehicles is the same as for Federal fleets. Thus, in each of the following years, the following percentage of fleet vehicles acquired for a qualifying State fleet must be alternative fuel vehicles:

	Percent
1995.....	10
1996.....	15
1997.....	25
1998.....	50
1999.....	75
2000 and each year thereafter.....	90

States that have fewer than 50 fleet vehicles and States that do not contain a metropolitan statistical area (or consolidated metropolitan statistical area) with a 1980 Census population of 250,000 or more would not be subject to section 4103. Moreover, even in a State that has one or more fleets subject to section 4103, any State fleet used primarily outside a qualifying metropolitan statistical area or that contains less than 20 vehicles would not be covered.

Section 4104

This section requires certain municipalities (including cities, towns, boroughs, counties, parishes, districts, and other political subdivisions of a State) and certain private entities to acquire alternative fuel vehicles. Section 4104 applies only to municipal and private fleets that meet the same three tests that section 4103 applies to State fleets, namely:

- (1) The fleet operator must have at least 50 fleet vehicles, though not necessarily capable of being centrally fueled at one location;
- (2) The fleet operator must have at least 20 fleet vehicles that are capable of being centrally fueled at one location; and
- (3) The fleet of 20 or more vehicles that are capable of being centrally fueled must be used primarily in a metropolitan statistical area (or consolidated metropolitan statistical area) with a 1980 Census population of 250,000 or more.

Any municipality or private entity meeting all three tests would be required to purchase alternative fuel vehicles for the fleet or fleets of 20 or more vehicles that are used within the qualifying metropolitan statistical area. The schedule for purchasing alternative fuel vehicles is the same as for "clean-fuel" light-duty vehicles under section 246(b) of the Clean Air Act. Thus, in each of the fol-

lowing years, the following percentage of fleet vehicles acquired for a qualifying fleet must be alternative fuel vehicles:

	Percent
1998.....	30
1999.....	50
2000 and each year thereafter.....	70

Section 4105

This section contains miscellaneous rules governing the program.

Subsection 4105(a)

This subsection provides that when a mathematical application of the percentage purchase requirements in sections 4102, 4103, or 4104 results in a fraction, the fraction is to be rounded-up to the next whole number. Thus, for example, if a private fleet owner covered by section 4104 purchases 7 new vehicles in 1998, a literal reading of section 4104 would require the fleet owner to purchase 2.1 alternative fuel vehicles (30 percent of 7). Subsection (a) requires the fleet owner to purchase 3 alternative fuel vehicles.

Subsection 4105(b)

This subsection requires fleet owners to operate alternative fuel vehicles acquired pursuant to Subtitle A on alternative fuel except when operating in an area where the appropriate alternative fuel is unavailable. Thus, while section 4101(2)(B) permits covered fleet owners to acquire "flexi-fueled vehicles," which are capable of operating on gasoline or diesel fuel, subsection (b) would not permit the use of gasoline or diesel fuel in these vehicles when they are operating in an area where the alternative fuel the vehicle is capable of using is available. Thus, subsection (b) is broader than section 246(b) of the Clean Air Act, which requires use of "clean fuel" only when the vehicle is operating in an area that does not meet Clean Air standards.

Subsection 4105(c)

This subsection allows fleets containing diesel trucks weighing between 8,500 and 26,000 pounds to maintain the percentage of diesel trucks in the fleet that they have on the date of enactment of Subtitle A. Diesel trucks are still counted for purposes of establishing whether the State, municipal, or private fleet is subject to the purchase requirements, and the purchase requirements still apply with respect to the non-diesel-truck portion of the fleet. But, to the extent that the purchase requirements would otherwise require a fleet operator to replace diesel trucks with alternative fuel vehicles, subsection (c) waives the purchase requirement.

Take for example a private fleet that has 60 diesel trucks and 60 gasoline-powered cars on the date of enactment and replaces 20 diesel trucks and 20 gasoline cars each year. In 1998, subsection 4104 requires the fleet operator to acquire 12 alternative fuel vehicles (30 percent of the 40 vehicles replaced). Because the fleet operator can comply with section 4104 without diminishing the percentage of diesel trucks held on the date of enactment, section 4105(c) would have no effect.

In 2000, however, subsection 4104 would require the fleet operator to acquire 28 alternative fleet vehicles (70 percent of 40 vehicles replaced). Without section 4105(c), section 4104 would require the fleet operator to replace at least 8 diesel trucks with alternative fuel vehicles (or more if the fleet operator does not replace all 20 gasoline cars with alternative fuel vehicles). In this case, subsection (c) would operate to waive the section 4104 purchase requirement insofar as necessary to preserve the percentage of diesel trucks held on the date of enactment. Section 4104 would still apply to the fleet operator to the maximum extent consistent with preserving the percentage of diesel trucks.

Subsection (c) focuses on the portion of the fleet that consists of diesel trucks rather than the number of diesel trucks in the fleet on the date of enactment. Thus, if the fleet operator doubles the size of the fleet, the number of diesel trucks the fleet can double as well. If the fleet is reduced by half, the number of diesel trucks will decrease accordingly.

Subsection 4105(d)

This subsection allows municipal and private fleet operators (but not Federal agencies or States) to defer purchasing alternative fuel vehicles in 1998 and 1999. In 2000, however, the fleet operator must buy not only the number of alternative fuel vehicles otherwise required by section 4104 but also 1.5 times the number of alternative fuel vehicles deferred from 1998 and 1999.

Take for example a private fleet that replaces 10 vehicles every year. Section 4104 would require the fleet operator to acquire 3 alternative fuel vehicles in 1998, 5 in 1999, and 7 in 2000 and each year thereafter (i.e., 30, 50, and 70 percent of 10 vehicles, respectively). Instead of acquiring 3 alternative fuel vehicles in 1998 and 5 in 1999, subsection (d) permits the fleet owner to wait until 2000 to begin acquiring alternative fuel vehicles. Beginning in 2000, however, subsection (d) requires the fleet owner to acquire nothing but alternative fuel vehicles until the owner acquires 12 alternative fuel vehicles (1.5 times 3 plus 5) in addition to those otherwise required by section 4104. Thus, in this example, the fleet owner would need to acquire 10 alternative fuel vehicles instead of 7 each year from 2000 through 2004 until the 12 "make-up" vehicles are acquired.

The purpose of subsection (c) is to enable fleet operators that may be required to acquire relatively small numbers of alternative fuel vehicles in the first two years of the program to defer these acquisitions until they need to acquire enough alternative fuel vehicles to justify the cost of installing refueling or maintenance capability for them.

Section 4106

This section provides exemptions from the purchase requirements of sections 4102, 4103, and 4104.

Subsection 4106(a)

This subsection directs the Secretary of Energy to exempt any Federal agency, State, municipality, or private fleet operator if the Secretary determines that either alternative fuel vehicles meeting

the fleet operator's requirements or alternative fuel supplies are not available.

The subsection (a)(2) exemption for cases in which alternative fuel supplies are unavailable contains two parts. Alternative fuel must not only be unavailable from service stations open to the general public in the area but also the cost to the fleet operator of installing a refueling facility to service the operator's fleet must make this alternative impracticable.

The Committee believes that the demand for alternative fuels created by this legislation will encourage service stations and alternative fuel distributors to make adequate supplies of such fuels publicly available. Nonetheless, Subtitle A would require fleet operators to install their own refueling facilities where supplies are not publicly available unless the cost of doing so would impose an unreasonable financial burden on the fleet operator.

Subsection 4106(b)

This subsection provides that any exemption granted by the Secretary under section 4106 be effective for no more than 12 months, though it can be renewed for like periods. The purpose of this subsection is to make it clear that the unavailability of either vehicles or fuels in the early years of the program shall not permanently relieve fleet operators of their responsibilities under the program. The Committee expects that any early shortage of either vehicles or alternative fuels will be corrected by the market forces set in motion by this subtitle.

Section 4107

This section allows fleet operators to meet the requirements of sections 4102, 4103, and 4104 by converting conventionally fueled vehicles to run on alternative fuels. The section makes clear, however, that nothing in Subtitle A requires fleet owners to convert conventional vehicles to alternative fuels. Section 4107 is essentially identical to section 247(a) of the Clean Air Act.

It should be emphasized that the requirements of sections 4102, 4103, and 4104 apply to the number of vehicles the fleet operator acquires in any given year, not to the total number of vehicles in the operator's fleet. If vehicles meeting the fleet operator's needs are not being produced or are not commercially available in adequate numbers, then the Committee expects the Secretary of Energy to exempt the fleet operator from the purchase requirements in accordance with section 4106. The fleet operator would not be expected to convert new or existing conventional vehicles to satisfy the requirements of Subtitle A. Nonetheless, if a fleet operator elects to convert conventional vehicles, such conversions would count toward satisfying the requirements of section 4102, 4103, or 4104.

An alternative fuel vehicle that is produced by an auto maker by modifying a conventional vehicle would not be considered to be "converted" for purposes of section 4107 if the original manufacturer makes the modifications before the vehicle is first sold.

Section 4108

This section establishes a credit system. The Secretary of Energy is instructed to issue credits to States, municipalities, and private fleet operators covered by sections 4103 and 4104 that purchase more alternative fuel vehicles than required or purchase them before required. Credits can be used to satisfy the holder's obligation to acquire an alternative fuel vehicle in a subsequent year or can be sold to another fleet operator, who can then use it to satisfy his purchase obligation.

Section 4109

This section requires Federal agencies, States, municipalities, and private fleet operators to file such reports as the Secretary determines to be needed to administer and enforce the alternative fuel fleet program.

Section 4110

This section provides for the enforcement of the requirements of Subtitle A.

Subsection 4110(a)

This subsection prescribes a maximum civil penalty of \$2,500 for each violation of an acquisition requirement under section 4103 or 4104 or the alternative fuel use requirement under section 4105(b).

Subsection 4110(b)

This subsection provides for judicial enforcement of the requirements of the subtitle in the Federal district courts.

Subsection 4110(c)

This subsection authorizes the court to reduce the amount of the penalty assessed under section 4110 in the interest of justice. This authority and the types of factors to be considered in exercising the authority are comparable to those provided in section 211(d) of the Clean Air Act (as amended by section 228(d) of Pub. L. No. 101-549, and codified at 42 U.S.C. 7545(d)).

Section 4111

This section provides for the implementation of the alternative fuel fleet program.

Subsection 4111(a)

This subsection directs the Secretary of Energy to adopt rules implementing the subtitle.

Subsection 4111(b)

This subsection authorizes the Secretary to delegate implementation of the program within any State to the Governor of the State. The Governor must first certify to the Secretary that the State has a program to administer and enforce the program, and the Secretary must find that the State program is in accordance with the requirements of Subtitle A.

Subsection 4111(c)

This subsection authorizes a one-time appropriation of \$20 million, to remain available until expended, to be used to provide financial assistance to States to which administration of the program is delegated.

SUBTITLE B—ELECTRIC VEHICLE AND ELECTRIC-HYBRID VEHICLE TECHNOLOGY DEMONSTRATION, INFRASTRUCTURE, AND CONFORMING AMENDMENTS

Part A—Electric Vehicle and Electric-hybrid Vehicle Demonstration

Section 4201

This section is self-explanatory.

Section 4202

This section establishes definitions for purposes of this part and is self-explanatory.

Section 4203

This section directs the Secretary of Energy (the Secretary), in consultation with the Electric and Electric-hybrid Vehicle Program Site Operators, the vehicle manufacturers, the electric utility industry, and the battery manufacturers, and other appropriate persons, to conduct a program for the demonstration of electric vehicles, electric-hybrid vehicles, and the associated equipment of such vehicles.

The Committee believes that electric and electric-hybrid vehicles should play an increasingly important role in the Nation's transportation sector, in the reduction of vehicle emissions and in reducing the Nation's dependence on petroleum based fuels. However, the Committee believes that the initial costs of electric and electric-hybrid vehicles may be such that without Federal involvement, widespread commercial demonstration may not occur. The demonstration program under this part is intended to provide electric vehicle and battery manufacturers, customers, and policy makers with information and experience regarding electric and electric-hybrid vehicle use and to help resolve many of the current technical issues surrounding the deployment of electric vehicles, including the durability, reliability and serviceability of these vehicles. For this reason, the Secretary is required to structure the program to evaluate such vehicles in field use, including fleet operation.

The Secretary is directed to solicit proposals for the demonstration of electric vehicles, electric-hybrid vehicles or associated equipment in one or more eligible metropolitan areas. The section defines metropolitan statistical area in keeping with the definition under the Clean Air Act, that is, an area with a population of 250,000 in 1980. Those wishing to submit a proposal under this program must include a thorough description of the vehicle and the intended use of the electric or electric-hybrid vehicle, the eligible metropolitan areas slated for participation in the project, the number of vehicles to be demonstrated, life-cycle costs, the retail price differential between the electric or electric-hybrid vehicle and

a comparable conventionally-fueled vehicle, the proposed discount payment, the amount of State and local contributions, and any other information the Secretary deems necessary to make a determination for Federal funding.

Section 4204

This section requires the Secretary, in consultation with the Secretary of Transportation, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, to select at least 1, but not more than 10, proposals for financial assistance. This section requires that a responsible agent—a “proposer”—act as an agent between the electric or electric-hybrid vehicle manufacturers, the purchasers, and the Federal Government. The proposer may be a municipal or State entity, utility, manufacturer, or other qualified person who chooses to submit a proposal to the Department for consideration.

The Department shall ensure that the electric or electric-hybrid vehicles are used in metropolitan non-attainment areas as specified in the section. By limiting the demonstration projects to eligible metropolitan areas with serious air quality programs or with large population centers, the Committee intends that the greatest consumer interest be generated for the eventual widespread use of these vehicles. To ensure that cities with sizeable populations that do not fall under the criteria for a non-attainment area are not excluded from program participation, this section directs the Secretary to select at least one project to be chosen from an area outside of a non-attainment area.

In addition, the Secretary shall ensure that at least 50 vehicles comprise any selected project under this program, that no project shall receive more than \$3 million in Federal funding, and that information regarding the operation and performance of the electric or electric-hybrid vehicle shall be provided to the manufacturer and the Department. The Committee intends that the number of vehicles per project shall be sufficient to ensure the availability of adequate support services for parts and maintenance of the electric and electric-hybrid vehicles.

Furthermore, to ensure that Federal dollars are provided only to qualified technologies and manufacturers, program participation is limited to those manufacturers who are capable of providing service and parts for a period of five years or more.

This section limits the number of projects that may be funded under this program by the Secretary to 10 unless funds have not been completely expended for the first ten projects.

Section 4205

The purpose of this section is to specify means for calculating the system of discount payments to purchasers of electric vehicles and electric-hybrid vehicles. The Federal cost-share or discount payment to purchasers is capped in several different ways: the Federal cost-share shall be whichever is the lesser of: (1) no greater than the cost of a comparable conventionally fueled vehicle and no greater than the price differential between an electric vehicle or an electric-hybrid vehicle and a conventionally fueled vehicle; and (2) no greater than \$10,000 per electric or electric-hybrid vehicle. In

addition, the aggregate discount payment paid to any one proposer under this part may not exceed \$3 million.

The discount payment is meant to offset the significant cost disadvantage that purchasers in demonstration programs will face as a result of the relatively low-volume and high life-cycle costs of electric and electric-hybrid vehicles. The Committee believes that incentives such as those offered by this part will stimulate research and development of new electric vehicle technologies as well as build consumer confidence in the product.

Section 4206

This section sets forth the policy for cost-sharing for demonstration projects under this part. In general, the Committee intends for demonstration projects to be cost-shared with the private sector to the maximum extent possible and, therefore, directs the Secretary to seek to obtain at least 50 percent of the cost from non-Federal sources. The Committee believes, however, that the Secretary should have flexibility in determining the extent to which non-Federal funding is necessary and appropriate. To that end, the Secretary is authorized to reduce the percentage of non-Federal funding required on a case-by-case basis using the standards set forth in the statutory language. The Committee expects that the Secretary, in exercising this discretion, will consider where appropriate the value of in-kind contributions in making a determination of the appropriate and necessary level of non-Federal support.

Section 4207

This section directs the Secretary to report annually to Congress on the progress being made toward wide-spread commercialization of electric vehicles and electric-hybrid vehicles under the cooperative agreements of part A.

Section 4208

This section authorizes such sums as may be necessary, to remain available until expended, to carry out the purposes of part A.

Part B—Electric Vehicle and Electric-hybrid Vehicle Infrastructure Development

Section 4211

This section is self-explanatory.

Section 4212

This section establishes definitions for purposes of this part and is self-explanatory.

Section 4213

This section establishes a program for the collection and dissemination of information and data for use by persons seeking to manufacture, sell, lease, own, or operate electric vehicles and electric-hybrid vehicles. The data acquisition program is designed to produce detailed information regarding the application of these ve-

hicles, demographic information on purchasers, and data on consumer preferences.

Where feasible, the Committee intends for the Secretary to utilize the existing data collection efforts of other Federal and State agencies.

Section 4214

The Committee recognizes the pivotal role that the States and localities play in determining the introduction and ultimate success of alternative fueled vehicles. This section creates a joint Federal-State program for the development of electric vehicle infrastructure. Under the program, the Secretary is required to issue guidelines for use by State and localities in the development of infrastructure plans for electric and electric-hybrid vehicles. These guidelines should include information to help States evaluate and include in their plans the availability of sufficient quantities of energy to support commercial electric and electric-hybrid vehicles, the likelihood of implementation, and the impact on energy usage and vehicle emissions in their State or locality.

In addition, the Federal Government is authorized to make planning, technical, and financial assistance available to the governors of those States that have shown a voluntary commitment to the development of electric vehicle and electric-hybrid vehicle incentive and implementation plans. The Secretary is required to report annually to Congress on the operation and relative success of these Federal assistance programs for electric vehicle infrastructure development.

Section 4215

This section authorizes the Secretary to enter into as many as five cost-shared joint ventures with the private sector for research, development, and demonstration of infrastructure projects and systems for electric vehicles and electric-hybrid vehicles in geographically and climatically diverse regions of the country. Qualifying infrastructure projects or systems under these joint ventures might include the installation of battery recharging facilities in existing service stations, the installation of charging facilities in parking structures, the development of utility rate structures designed to encourage investment by electric utilities in infrastructure-related capital equipment, or public education and incentive programs. In addition, because of the uncertainty regarding the eventual use of any specific type of battery, the Committee stresses the importance of State and local consideration of the changes in infrastructure requirements and operations that may become necessary as new battery technologies are developed. In the case of electric-hybrid vehicles, the infrastructure, project, or system may address the non-electric alternative fuel.

Section 4216

This section sets forth the policy for cost-sharing for this part, consistent with the policy set forth in section 4206.

Section 4217

This section is a self-explanatory savings clause with respect to antitrust law.

Section 4218

This section authorizes such sums as may be necessary to carry out the purposes of part B of this subtitle.

Part C—Amendment to the Alternative Motor Fuels Act

Section 4221

This section amends section 400AA(a) of the Energy Policy and Conservation Act (EPCA) regarding alternative fuel use by light duty Federal vehicles. The purpose of this section is to expand the type of vehicles that may be acquired under the Alternative Motor Fuels Act of 1988 (AMFA) to include electric and electric-hybrid vehicles. In addition, the section makes liquefied petroleum gas, including propane, eligible fuels under AMFA.

The Committee believes that this action is consistent with Departmental policy of treating electric and electric-hybrid vehicles and liquefied petroleum gas fueled vehicles as alternative fueled vehicles and would help ensure that incentives available for other alternative fueled vehicles under AMFA are also made available.

Section 4222

This section amends section 513(c) of the Motor Vehicle and Information Cost Saving Act regarding Corporate Average Fuel Economy (CAFE) credits. Under the current law, vehicles powered by liquefied petroleum gas are not eligible for CAFE credits. The provisions of section 4222 would allow vehicles using liquefied petroleum gas to qualify for CAFE credits.

SUBTITLE C—ALTERNATIVE FUELS

Section 4301

This section provides that Subtitle C may be cited as the "Replacement and Alternative Fuels Act of 1991."

Section 4302

This section contains findings related to the subtitle.

Section 4303

This section states the purposes of the subtitle.

Section 4304

This section defines terms used in the subtitle. The term "provider," as defined in section 4304(9) and used in sections 4306, 4307, and 4308, is intended to be construed to enable the Secretary to focus actions under those sections on persons that provide replacement and alternative fuels to the public. The Committee does not intend that the term be construed as enabling the Secretary to attempt to require a producer or supplier of one type of motor fuel to make available supplies of a replacement or alternative fuel that

the producer or supplier is not in the business of producing or supplying.

Section 4305

This section directs the Secretary of Energy to establish a program to promote the development and use of domestically produced replacement and alternative fuels.

Subsection 4305(a)

This subsection provides that the purpose of the program is to displace conventional petroleum motor fuels with replacement and alternative fuels to the maximum extent practicable. The program is to put primary emphasis on making replacement and alternative fuels available in areas where they will result in the greatest improvement of air quality.

Subsection 4305(b)

This subsection identifies issues the Secretary is to examine under the program. Among these issues, the Secretary is required to assess the technical and economic feasibility of domestically producing enough replacement and alternative fuels to supply 30 percent of the nation's motor fuel needs by 2010.

Section 4306

This section requires the Secretary to estimate annually both the supply of and the demand for replacement and alternative fuels during the following year.

Subsection 4306(a)

This subsection identifies specific factors the Secretary must examine in estimating demand for replacement and alternative fuels.

Subsection 4306(b)

This subsection requires providers of replacement and alternative fuels to certify annually to the Secretary the amount of each such fuel the provider plans to produce.

Section 4307

This section directs the Secretary to seek voluntary commitments from domestic replacement and alternative fuel providers to provide adequate supplies of such fuels to meet the national demand. Nothing in this section or any other provision of the subtitle is, however, intended to be read as authorizing the Secretary to engage in brokering, dealing in, or allocating replacement or alternative fuels.

Section 4308

This section provides for the event that efforts to ensure adequate supplies of replacement and alternative fuels through voluntary supply commitments under section 4307 prove inadequate and there is a shortage of one or more replacement or alternative fuels.

Subsection 4308(a)

This subsection requires the Secretary to notify Congress of any such shortage.

Subsection 4308(b)

This subsection requires the Secretary to submit a plan detailing the actions the Secretary may take to require providers of motor fuels to make available to the public adequate domestic supplies of the replacement or alternative fuel for which there is a shortage. The Secretary is required to consult with the providers of such fuels in developing the plan. The operative language of this subsection ("require providers . . . to make available") is modeled after section 246(e) of the Clean Air Act (as added by section 229 of Pub. L. No. 101-549). The subsection does not confer any new authority on the Secretary to establish prices for, or engage in the allocation of, replacement fuels or alternative fuels.

Subsection 4308(c)

This subsection requires the plan to lay before Congress for at least 60 days before the Secretary implements it.

Subsection 4308(d)

This subsection requires that the Secretary impose any requirement to make replacement or alternative fuel available fairly, equitably, and proportionately on all appropriate providers of the replacement or alternative fuel of which there is a shortage.

Section 4309

This section authorizes an annual appropriation of up to \$10 million for fiscal years 1992 through 1996.

SUBTITLE D—MASS TRANSIT AND TRAINING

Section 4401

This section authorizes the Secretary to enter into cooperative agreements with, and provide financial assistance to, municipal, county, or regional transit authorities in large urban areas to demonstrate the feasibility of using natural gas or other alternative fuels for mass transit.

The Secretary may not enter into any agreement or joint venture for a demonstration project with any municipal, county, or regional transit authority unless that authority agrees to provide at least 25 percent of the costs of the project. This section augments the current Urban Mass Transit Administration program by providing priority for programs for those large urban areas with significant air quality problems.

The section authorizes \$30 million for each of fiscal years 1992, 1993, and 1994.

Section 4402

This section directs the Department of Labor to establish and carry out a training and certification program for high quality technicians with the specialized skills necessary to ensure that conversion of conventionally fueled vehicles and the maintenance of

alternative fueled vehicles meet the stringent emissions standards that will be in effect under the Clean Air Act. The training and maintenance programs are intended to provide technicians with skills in installation procedures and techniques, adherence to vehicle specifications, vehicle operating procedures, emissions testing, and other appropriate mechanical concerns applicable to vehicle conversions.

In addition, the Secretary is permitted to enter into cooperative agreements with, and provide financial assistance to, private parties deemed appropriate to provide training programs for the installation and maintenance of conversion equipment. It is the Committee's intent that the training program be consistent with the Alternative Motor Fuels Act of 1988.

Section 4402 authorizes \$5 million for each of fiscal years 1992, 1993, and 1994.

Title V—Renewable Energy

SUBTITLE A—CORECT AND COEECT

Section 5101

This section expands the duties and responsibilities and clarifies the mandate of the interagency working group for renewable energy—the Committee on Renewable Energy Commerce and Trade (CORECT). This section also establishes a parallel and complementary interagency working group for the promotion and export of energy efficient products and technologies—the Committee on Energy Efficiency Commerce and Trade (COEECT). In order to maximize the utilization of resources, the Department of Energy (the Department) is encouraged to share funding, staff and other resources between CORECT and COEECT where the objectives and responsibilities of the two interagency groups overlap.

CORECT and COEECT are intended to promote the development and application of renewable energy and energy efficiency resource technologies that increase the efficiency of fossil fuels, reduce the dependence of lesser-developed countries on imports of fossil fuels and encourage the use of sustainable biomass, wind, hydroelectric, solar, geothermal, and other energy resources which emit little or no greenhouse gases.

According to testimony received from the Department of Energy, investment levels of \$50 to \$60 billion per year will be required to furnish electric power in the developing world, and these requirements are expected to grow to \$120 to \$200 billion in the next 30 years. CORECT and COEECT can help reduce this enormous need for capital through the promotion of energy efficiency and the development of renewable energy resources.

Toward this goal, the interagency working groups are encouraged to provide aggressive in-country technical training on renewable energy and energy efficiency technologies and equipment, establish loan programs to ease access to capital and credit for the aforementioned technologies, and support private sector efforts in the United States to commercialize and export renewable energy and energy efficiency resource technologies to lesser-developed nations. In addition, this section is intended to encourage the Depart-

ment under the auspices of CORECT and COEECT to promote research and development of renewable energy and energy efficiency technologies designed to fit the particular needs of the lesser-developed country in which they will be used, in addition to providing technical assistance for training workers and support staff on the latest in energy equipment and technology.

This section also provides for the establishment of CORECT outreach offices in the Pacific Rim and Caribbean Basin.

Section 5102

This section directs the Department to develop a comprehensive data base and information system for use in assessing the specific energy needs of lesser-developed countries in order to facilitate the dissemination of renewable energy and energy efficiency products and technologies. This data base shall include information on the technical and economic competitiveness of various renewable energy and energy efficiency resource products and technologies, and the status of existing technology assistance programs. The information from this data base should be made available to industry, Federal and multilateral lending agencies, non-governmental organizations, in-country officials and other relevant parties or institutions.

Section 5103

This section directs the Secretary of Energy (the Secretary) to prepare and submit a comprehensive report evaluating the full range of renewable energy and energy efficiency resource technologies that may be used to meet the burgeoning energy needs of the lesser-developed countries. The report should also include an evaluation of current programs and recommendations for implementing future programs that focus on appropriate technologies that are economically viable in cash poor developing countries; addressing existing needs for power rather than long-range projections in energy growth; working with nationals to ensure the project's continuation; using indigenous materials and associated hardware when possible; expanding technical and administrative training programs; and examining the potential for using economic incentives for promoting technology transfer.

Section 5103 authorizes \$10 million for fiscal year 1992 and such sums as may be necessary thereafter for fiscal years 1993 and 1994. A separate fiscal 1992 authorization of \$2.75 million is provided for purposes of the outreach program, and such sums as may be necessary for fiscal years 1993 and 1994.

Section 5104

This section adds a new function to the list of duties to be assigned to the Assistant Secretaries under the Department of Energy Organization Act that would promote the development and export to lesser-developed countries of domestic energy resource products and technologies including renewable energy and energy efficiency resource products and technologies.

SUBTITLE B—RENEWABLE ENERGY INITIATIVES

Subsection 5201(a)

This subsection amends subsection 6(c) of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (REEETCA) (Pub. L. No. 101-218) to require the Secretary to solicit proposals for at least one joint venture for the demonstration of each of the following technologies: biofuels energy systems; high-temperature geothermal energy; low-temperature geothermal energy; photovoltaic and wind energy; direct combustion of gasification of biomass; fuel cells; and utility-scale photovoltaic. Section 6 of REEETCA provides for cost-shared joint ventures involving the Department and non-Federal entities to accelerate the commercial application of renewable energy and energy efficiency technologies. The Committee intends that the Department add the aforementioned technologies to the list of technologies covered under section 6 of REEETCA in order to aid in the displacement of imported oil and encourage the use of renewable energy to provide reasonably priced electric energy with minimum environmental impact.

This subsection also requires the Secretary to conduct a joint venture for energy technology export training. The Committee intends for this to be done in conjunction with the activities of CORECT and COEECT or other applicable Federal programs for training individuals from lesser-developed countries in energy technology management and application. This program receives a \$6 million authorization under this subsection.

This subsection authorizes \$3 million for each of the fiscal years 1992, 1993, and 1994 for each renewable energy technology mentioned above with the exception of the utility-scale photovoltaic joint venture which has an authorization of \$9 million for each of the three fiscal years.

Subsection 5201(c)

This section grants authority to the Secretary to "buydown" or subsidize interest rates on private bank loans in order to leverage long-term financing for the solar, biomass, and wind industries. Under the buydown agreements, the Secretary primarily through State energy offices, would enter into agreements with private lenders to provide a share of the interest on loans made to renewable energy projects. Monies under the buydown program would be divided by the Secretary among the States under the terms of the State Energy Conservation Program for use in the manufacture, acquisition or construction of projects that principally use or produce renewable electric and thermal energy. By using the term "principally", the section makes it clear that renewable energy equipment cannot be a peripheral part of the activity financed by the buydown agreement. Instead, the major purpose of the loan should be to finance renewable energy technologies, although the renewable energy equipment could be a small part of a larger operation that would otherwise be financed. Currently under REEETCA, the Department has money to fund joint ventures for renewable energy projects but does not have specific authority for private financing interest-rate buydowns.

The terms of the buydown program provide that loans must be for periods of at least 15 years for loans under \$1 million, and at least 20 years for loans over \$1 million. In addition, the Federal share of the buydown is capped at four percent over the prime rate in order to ensure that projects that are not financially viable do not receive an interest buydown.

Section 5202

This section requires the Secretary to undertake a report evaluating opportunities to minimize waste outputs from production processes in United States industry and is self-explanatory.

Section 5203

This section amends existing law to encourage the development and implementation of renewable energy and energy efficiency projects at the State and local level.

Section 5204

This section establishes the Spark M. Matsunaga Renewable Energy and Ocean Technology Center as a cooperative research and development facility at Keahole Point, Hawaii. Subsection (d) of this section directs the Secretary to enter into a cooperative agreement with a research institution in the State of Hawaii to administer the Matsunaga Center. It is important to point out, however, that the Committee does not intend for the Matsunaga Center to be a Federal facility. The facilities at Keahole Point are not presently owned by the Federal Government, and the Committee does not intend to change that status.

Subsection (f) of this section requires that matching funding be obtained from non-Federal entities in order for the Center to be eligible to receive Federal funding. The Committee intends that there be flexibility in determining the percentage of funding that must be obtained from non-Federal sources. In general, the Committee believes that the Secretary should seek to obtain 50 percent funding from non-Federal sources. The Committee intends, however, for the Secretary to include in-kind contributions in his determination of the appropriate and necessary level of non-Federal support. Specifically, the Committee believes that the Secretary should consider the value of the facilities and land surrounding the Matsunaga Center that is being provided by the State of Hawaii in making this determination.

Section 5205

This section establishes a program at the Department, in consultation with the National Academy of Sciences for awarding cash prizes for technical achievement in the following technologies: solar thermal; photovoltaics; windpower; sustainable biomass; geothermal; and other appropriate renewable technologies. Awards shall be distributed on the basis of a person's ability to meet specified technical milestones for a chosen renewable energy technology as established by the Secretary.

The Committee intends for these awards to be given in recognition for outstanding progress in the development and commercialization of second-generation renewable energy technologies and ap-

plications rather than for the commercialization of existing technologies. Persons applying for awards under this program must be United States citizens. The amount of the award, which is not to exceed \$5 million, shall be determined by the Secretary and shall be based on the technical merit and prospects for commercialization of the renewable energy technology under consideration.

SUBTITLE C—HYDROPOWER

Section 5301

The original concept of hydroelectric licensing under the Federal Water Power Act of 1920 (FWPA) was that the Federal Power Commission (now the Federal Energy Regulatory (FERC)) would be the exclusive arbiter of whether a proposed project is "best adapted to a comprehensive scheme" for development of a waterway and other beneficial public uses. However, over the years this concept has been eroded. Section 5301 of this bill is intended to make progress back to the idea of "one stop shopping" for hydroelectric licensing.

Subsections 5301(a) through (c)

These subsections promote the concept of unitary review by deleting Federal land management agencies' authorities to impose mandatory conditions on hydroelectric licenses pursuant to section 4(e) of the Federal Power Act, in favor of the comprehensive FERC review process enacted by Congress as part of the Electric Consumers Protection Act of 1986 (ECPA).

When the FWPA was reenacted as Part I of the Federal Power Act, it included a new section 4(e) which made licenses for projects located on Federal reservations subject to the conditioning power of the Secretary of the Department under whose supervision the reservation falls. Originally, the language of section 4(e) was interpreted as precatory. However, in 1984 the Supreme Court ruled that 4(e) conditions are mandatory. *Escondido Mut. Water Co. v. La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians*, 466 U.S. 765 (1984).

In 1986, as part of ECPA, Congress enacted a rigorous and comprehensive process for the consideration of environmental and other values in the context of hydroelectric licensing. Subsections 5301 (a)-(c) delete the section 4(e) mandatory conditioning requirements in favor of ECPA's comprehensive review process. Under these provisions, FERC will be required to consider and give substantial deference to the recommendations of the Secretary of the Department under whose supervision the Federal reservation falls. This change is intended to establish a relationship between Federal land managers and FERC that is parallel and equivalent to the relationship between State and Federal wildlife and fishery managers and FERC which was established under ECPA.

This bill does not change section 18 of the Federal Power Act regarding the authority of Federal fishery managers to impose license conditions regarding fishways at hydroelectric projects. Similarly, this bill does not change current law under section 4(e) regarding the Secretary of the Interior's authority to impose conditions on licenses for projects located in whole or in part on Indian reservations.

Subsection 5301(d)

This subsection deletes section 10(i) of the Federal Power Act which allows FERC to waive certain requirements of the Act for small projects. Subsection (i) is unnecessary in light of section 5302 of the bill which provides for State licensing jurisdiction over small projects.

Subsection 5301(e)

This subsection is intended to improve procedural aspects of the environmental, engineering, and other reviews associated with licensing a hydroelectric project. This subsection would require FERC to establish new procedures to give license applicants the earliest and most complete practicable notice of what environmental, engineering, and other analyses FERC will require to accompany the license application.

This subsection also establishes FERC as the mandatory lead agency for all National Environmental Policy Act (NEPA) compliance activities associated with hydroelectric project licensing. Subsection (e) would require FERC to coordinate a single, consolidated review by interested Federal agencies, State agencies, and affected Indian tribes of each application for a license for a new or existing hydroelectric facility after giving reasonable notice of the application and review. A consolidated NEPA review coordinated by the Commission would satisfy the requirements of NEPA for all agencies with respect to the project subject to the review. The Commission's license decisions and any additional approvals required by other agencies would be required to take into account the results of the consolidated review. The Commission would also be permitted to set time limits for actions related to the review, such as submission of agency comments or conditions. If these time limits are not met, FERC would be allowed to continue to process and take any appropriate action on the license application.

Subsection (e) would also allow hydroelectric license applicants to pay for the preparation of environmental documents by contractors chosen by FERC. This subsection is intended to remedy the situation where, under current law, the preparation of environmental documents is sometimes delayed because of funding delays at FERC.

Section 5302

Section 5302 would amend the Federal Power Act to grant States the option of exercising plenary jurisdiction over certain hydroelectric projects with generating capacity of 5 megawatts or less. The authority granted by this section would apply to projects: (1) that are not part of a project licensed under the Federal Power Act prior to the date of enactment of this subsection; (2) for which a license application has not been accepted for filing by FERC prior to the date of enactment of this Act (unless such application is withdrawn at the election of the applicant); (3) located entirely within the boundaries of a single State; and (4) not located in whole or in part on any Indian reservation, unit of the National Park System, component of the Wild and Scenic Rivers System or seg-

ment of a river designated for study for potential addition to such system.

With respect to projects located in whole or in part on Federal lands, State authorizations for project works under section 5302 are subject to the approval and mandatory conditions of the Secretary having jurisdiction with respect to such lands.

Any State may exercise the authority granted under section 5302 effective upon the date on which the Governor of the State notifies the Secretary of Energy that the State has assessed its river resources in a comprehensive way and has in place an appropriate process for regulating such projects.

The Committee expects States to respond appropriately to potential interstate or international effects of their licensing decisions, as well as effects on Federally protected species and resources. The Committee notes, however, that this section imposes no substantive criteria upon State hydroelectric licensing decisions or regulatory processes.

Section 5303

This section authorizes a series of studies coordinated by the Secretary of Energy. The studies would apply to all Federally owned or operated water project facilities. Most such projects are under the jurisdiction of the Bureau of Reclamation or the Army Corps of Engineers.

An individual study would be prepared for each of the Nation's principal river basins.

The purpose of the studies is to identify cost-effective opportunities to increase hydropower production at existing Federal water project facilities. Toward this end, the Secretary would be required to study opportunities to improve the facilities or the use of the facilities in order to generate or make available more hydropower to serve the Nation's energy needs. Appropriations are authorized for these studies.

Section 5304

This section would give the Secretary of the Interior authority and direction to study and implement water use efficiency measures, including operational measures, at all Federal reclamation projects where doing so is a cost-effective means of increasing hydro production or making more efficient use of project power. Under this section, the Secretary of the Interior is also granted authority to implement water use efficiency measures at all Federal reclamation projects as a means of providing additional water for fish and wildlife mitigation and enhancement. The Secretary's activities under this section must be preceded by feasibility studies (including certain findings by the Secretary and the Administrator of any affected Power Marketing Administration), consultation with affected governmental and public interests, and a specified period for Congressional review.

This section does not diminish the Secretary of the Interior's obligations to construct new irrigation or water supply projects as provided by existing law. The section authorizes appropriations to carry out these activities.

Section 5305

Section 5305 removes the jurisdiction of the Federal Energy Regulatory Commission to license projects on fresh waters in the State of Hawaii.

The Committee has included this provision after a review of Hawaii's unique circumstances. Unlike the long interstate rivers of the continental United States, Hawaii's streams are isolated on individual islands and run quickly off steep volcanic slopes. There are no interstate rivers, few if any streams crossing Federal lands, and no Federal dams.

Hawaii's streams are generally not navigable except for a few which have brief wide stretches near their mouths as they open to the sea. In addition, Hawaii's unique tradition of surface water law that evolved from Native Hawaiian custom does not easily lend itself to integration with outside regulation.

Hawaii's streams are subject to protection under Article XII of the State Constitution, the State Water Code and a comprehensive statewide stream assessment which serves as a basis for protecting stream resources. Proposed hydroelectric projects are subject to a thorough review both when they seek to amend instream flow standards to obtain a State water lease and when they seek to obtain a Conservation District Use Permit. For these reasons there is no discernible Federal purpose in making projects in Hawaii subject to jurisdiction under the Federal Power Act.

Section 5305 amends sections 4 and 23 of the Federal Power Act. The Committee has not amended other sections of the Act which relate to applications for permits, since the absence of Federal jurisdiction to grant a license in Hawaii makes any application for a permit meaningless.

Section 5306

This section would eliminate FERC jurisdiction over two hydroelectric projects located in Alaska. The projects, one located near Juneau, and the other near Sitka, are each smaller than 5 MW and, in the Committee's view, present no circumstances justifying FERC jurisdiction.

Section 5307

This section would authorize FERC to extend certain time limitations established by the Federal Power Act for two hydroelectric projects in Arkansas.

Other matters

The Committee devoted considerable discussion to proposals to address difficulties in the hydroelectric licensing process which have arisen under the Clean Water Act. Under Section 401 of the Clean Water Act, any applicant for a Federal license to conduct any activity which may result in the discharge of pollutants into navigable waters must generally provide State certification that any such discharge will meet applicable water quality standards under the Clean Water Act. Section 401 applies to hydroelectric licensing under the Federal Power Act because of the possibility that a hydroelectric project can affect water quality with respect to var-

ious considerations such as dissolved oxygen, turbidity, and temperature.

The Committee has been advised that some States have sought to employ the section 401 process to condition hydroelectric projects with respect to environmental or recreational matters that have nothing to do with water pollution or section 401. Such actions are objectionable for two reasons.

First, section 401 by its terms links the need for a permit to the possibility of "discharge" resulting from the permitted activity. While States may have conditioning power associated with the certification process, this power appears is bounded by the potential harm at issue (i.e., discharge of pollutants).

Second, all impacts of hydroelectric development other than "discharge of pollutants", including impacts on fish and wildlife habitat, beneficial uses, navigation, flood control and water supply, are already considered under the rigorous and comprehensive licensing process enacted by the Electric Consumers Protection Act of 1986. States are given full input into this licensing process. In the case of fish and wildlife impacts, their recommendations are given special deference. Given these facts, the use of the section 401 certification process to condition hydroelectric projects with respect to matters unrelated to water quality amounts to nothing more than an attempt to achieve "a second bite at the apple" which is not authorized under the Clean Water Act.

Such actions are not without cost. Licensing under the changes made to the Federal Power Act by ECPA is already both costly and time consuming. The imposition of additional, redundant and possibly conflicting layers of regulation under section 401 simply renders hydropower nonviable as an energy resource.

The scope of State conditioning power under section 401 has been litigated at least three times¹. In each instance, State courts have rejected the notion that States may impose conditions unrelated to water quality. The Committee agrees that these cases correctly interpret the statute. In light of the consistent result reached in litigation so far, the Committee finds it unnecessary at this time to take any action in this bill regarding section 401 of the Clean Water Act and hydroelectric licensing.

Title VI—Energy Efficiency

SUBTITLE A—INDUSTRIAL, COMMERCIAL AND RESIDENTIAL

Section 6101

This section would amend title III of the Energy Conservation and Production Act (ECPA) regarding building energy efficiency codes. Under the current terms of title III of ECPA, the Secretary of Energy (the Secretary) is required to promulgate voluntary building energy performance standards (BEPS). However, there have been substantial delays in the promulgation of these standards. The Committee recognizes that the private sector has taken

¹Bangor Hydro-Electric Company v. Board of Environmental Protection, Civ. Action Docket No. CV-90-53 (Me. Sup. Ct. slip op. issued October 23, 1990); Fourth Branch Associates v. DEC, 550 N.Y.S. 2d 769 (N.Y. Sup. Ct. 1989); Arnold Irrigation District v. Dept. of Environmental Quality, 717 P.2d 1274 (Ore. Ct. App. 1986), pet. for review denied, 726 P.2d 377 (1986).

the leadership role in the development of voluntary building standards through the efforts of organizations such as the Council of American Building Officials (CABO), the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) and the National Conference of States on Building Codes and Standards (NCSBCS). In general, the provisions of section 6101 would reiterate and clarify the Secretary's responsibility to promulgate a voluntary building code, and the section would set forth the relationship between this new Federal building energy code and the voluntary energy code as developed by industry.

Under the new section 304 of ECPA the Secretary would be required, within 2 years of the date of enactment, to issue a Federal building energy code which assures that Federal buildings include all energy efficiency measures that are technologically feasible and economically justified. Such Federal building energy code must contain the energy saving and renewable energy specifications of the industry voluntary building energy code, and must include a method of compliance that uses the same format as that used by the industry voluntary building energy code. The new section 304 would also require the Secretary to identify and describe the basis for any substantive difference between the Federal building energy code and the industry voluntary building energy code. Finally, the new section 304 would require that the existing energy performance standards for Federal buildings issued under title III of ECPA shall remain in effect until new procedures are adopted by Federal agencies, pursuant to section 305(b), to assure compliance with the new standards.

It is the Committee's intent that in the development of the Federal building energy code the Secretary will assure that the energy efficiency and other energy benefits associated with the use of building materials or designs that employ thermal mass will be reflected in the code. "Thermal mass" generally means using building materials which have a high capacity to store heat and which also slow the loss of thermal energy. Thermal mass can reduce heating and cooling requirements and can shift energy loads to off-peak energy consumption periods. In most cases thermal mass designs use commonly available building materials such as logs, concrete or brick.

In the past, the Department of Energy (the Department) has engaged in efforts to develop building standards that account for the effect of thermal mass. As a result, thermal mass provisions have been included in several building codes and voluntary consensus standards: the 1989 CABO Model Energy Code, the ASHRAE Standard 90.1, and DOE regulations. The Committee recognizes these previous efforts, and urges that more needs to be done.

The Committee believes that thermal mass technologies should play an increasingly important role in controlling the growth of energy consumption in buildings, and in shifting building energy loads to off-peak hours. In order to facilitate the use of thermal mass technologies, the Committee urges the Department to place greater emphasis on research and development of thermal mass applications and to educate building design professionals on the benefits of incorporating thermal mass principals in residential and commercial building construction.

The Committee intends that thermal mass should be considered as a recognized method of increasing energy efficiency in buildings for the purpose of this Act. Federal entities charged with developing energy efficiency strategies shall recognize thermal mass when implementing incentive programs such as energy efficient mortgages, home energy ratings systems, tax relief for energy rebates provided by utilities to consumers, and other measures and regulations that may be promulgated to encourage energy efficient construction.

Under the new section 305 of ECPA the head of a Federal agency may expend Federal funds for the construction of a new Federal building only if the building meets or exceeds the Federal building energy code. This new section would also require, under subsection (b), that the head of each Federal agency that guarantees a mortgage for constructing a new building shall adopt the procedures necessary to assure that such new building meets or exceeds the Federal building energy code. This subsection is intended to apply to Federal mortgage programs such as those of the Federal Housing Administration (FHA), the Veterans Administration (VA), and the Farmers Home Administration (FmHA). Finally, the new section 305 requires that procedures adopted by the head of a Federal agency to assure that a Federal building meets or exceeds the interim standards for new Federal buildings issued under the existing language of title III of ECPA shall remain in effect until the head of a Federal agency adopts procedures under section 305(b) regarding the adoption of the new standards.

The new section 306 of ECPA requires the Secretary to support the upgrading of the industry voluntary building energy code through consultation with appropriate organizations; compiling data on building energy efficiency codes; improving the technical basis for such codes; assisting in determining the cost-effectiveness and technical feasibility of energy efficiency measures included in the code; and developing interim energy performance standards for new non-Federal residential buildings. Section 306 further requires the Secretary, after consulting with appropriate Federal agencies, such as the Department of Housing and Urban Development, to periodically review the technical and economic basis of the industry voluntary building code and, based on ongoing research activities, recommend amendments to the industry voluntary building code and seek adoption of all technically feasible and economically justified energy efficiency measures. Finally, this new section requires the Secretary to participate in any industry process for the review and modification of the industry voluntary building energy code.

The new section 307 of ECPA establishes incentives for State and local governments to strengthen local building energy codes. Subsection (a) requires, within 2 years of the date of enactment, that each State shall submit a report to the Secretary on the type, status, and compliance and enforcement procedures of building energy codes used within the State. This section further authorizes incentive funding to the Secretary to provide grants to States to promote the adoption and implementation of the industry voluntary energy building codes. Only those States or units of local government with building energy codes at least as stringent as those of the industry voluntary energy building code would be eligible for

such incentive funds. Finally, this section would allow the Secretary to use up to 5 percent of the funds made available for administration of activities conducted pursuant to this section.

The new section 308 of ECPA authorizes the Secretary to provide technical assistance to States, units of general purpose local government, and other appropriate organizations to promote the strengthening of building energy codes or otherwise promote the design and construction of energy efficient buildings.

Finally, the new section 309 directs the Secretary to report annually to Congress on activities conducted pursuant to title III of ECPA.

Section 6102

This section would amend title II of the National Energy Conservation Policy Act (NECPA) and the Cranston-Gonzalez National Affordable Housing Act (Pub. L. No. 101-625) with regard to residential energy efficiency ratings and energy efficient mortgages, respectively.

Subsection 6102(a)

This subsection would add a new Part 6 to NECPA which would require the Secretary to promulgate voluntary guidelines that may be used by State and local governments, utilities, builders and others, that would enable the assignment of an energy efficiency rating to residential buildings. The new Part 6 would also require the Secretary to establish a program to provide technical assistance to State and local organizations to encourage the adoption of rating systems based on the voluntary guidelines promulgated under this part. Finally, the new Part 6 would include an authorization for the appropriation of such sums as may be necessary to carry out the provisions of the new part.

Subsection 6102(b)

This subsection would make a conforming amendment modifying the table of contents of NECPA to reflect the addition of Part 6.

Subsection 6102(c)

This subsection would amend sections 104 and 946 of the Cranston-Gonzalez National Affordable Housing Act to make three changes with respect to energy efficient mortgages. First, the subsection would add a definition of "energy efficient mortgages" to section 104 of the law. Second, it would require that the Uniform Mortgage Financing Plan to be developed under section 946(a) shall be consistent with and mutually supportive of the Federal building energy code and the residential energy efficiency rating voluntary guidelines to be developed pursuant to the National Energy Security Act of 1991. Third, subsection (c) would require that the task force established pursuant to section 946 shall determine whether a notification of the availability of energy efficient mortgages to potential home buyers would promote energy efficiency in residential buildings, and if so, then the task force shall recommend appropriate notification guidelines. Task force member agencies are authorized to implement such notification. This section guidelines, including necessary regulations.

Section 6103

This section would amend section 943 of the Cranston-Gonzalez National Affordable Housing Act regarding the National Commission on Manufactured Housing.

Subsection 6103(a)

This subsection would require consultation with the Secretary, and would require that the Commission make recommendations regarding additional or revised standards for thermal insulation and energy efficiency applicable to manufactured housing.

Section 6103(b)

This subsection requires that the Secretary shall assess the energy performance of manufactured housing and shall make recommendations to the National Commission on Manufactured Housing regarding thermal insulation and energy efficiency improvements applicable to manufactured housing which are technologically feasible and economically justified. Subsection (b) also requires the Secretary to test the performance and determine the cost-effectiveness of manufactured housing constructed to the standards established under section 943 of the Cranston-Gonzalez National Affordable Housing Act.

Section 6104

This section is designed to improve energy efficiency in energy intensive industries by expanding research and development pursuant to the Federal Nonnuclear Energy Research and Development Policy Act of 1974, and by authorizing the commercialization of new energy efficiency technologies for energy intensive industries through joint ventures.

Subsection 6104(b)

This subsection sets forth the procedures and the requirements for the conduct of such joint ventures including the criteria which the Secretary shall consider in evaluating joint venture proposals from private firms and investors. These criteria include whether the proposed research and development activities would improve the quality and energy efficiency of industries or industrial processes; the geographic distribution of such energy-intensive industries; and whether the proposed joint-venture project would be located in the region which has the energy-intensive industry that would benefit from the project.

Subsection 6104(c)

Finally, subsection 6401(c) provides an authorization for \$5 million, \$15 million, and \$25 million for fiscal years 1992, 1993, and 1994, respectively.

Section 6105

This section requires the Secretary of Energy, in consultation with the Council of Economic Advisors, to submit a report to Congress within one year of the date of enactment of this Act, and every three years thereafter through 2004, a report setting forth energy efficiency policy options that would both decrease domestic oil consumption and overall domestic energy consumption by one,

two, three, and four percent, per-year, per-unit of GNP, through the year 2005, below the projected consumption for 2005. The Secretary is also required to evaluate, describe and rank these policy options according to their cost-effectiveness and their feasibility of implementation.

Section 6106

This section is designed to promote energy efficiency in industrial plants by establishing voluntary guidelines for energy auditing and insulating.

Subsection 6106(a)

This subsection would require the Secretary, within 1 year of enactment and after appropriate consultation, to establish such voluntary guidelines.

Subsection 6106(b)

This subsection requires the Secretary to conduct a program of education and technical assistance to promote the use of the voluntary guidelines established under (a).

Subsection 6106(c)

Under subsection (c) the Secretary is required to report annually to Congress on the activities conducted pursuant to this section, including an evaluation of the effectiveness of the guidelines, and the responsiveness of the industrial sector to the guidelines.

Subsection 6106(d)

Finally, subsection (d) authorizes \$750,000 annually to carry out the purposes of this section.

Section 6107

This section is designed to promote energy efficiency through support for a national window rating program.

Subsection 6107(a)

This subsection directs the Secretary, after consulting with the National Fenestration Rating Council, industry representatives and other appropriate organizations, to provide financial and technical assistance to support the voluntary development of a national window rating program to establish energy efficiency ratings for windows and window systems. Such program shall set forth information to enable purchasers of windows or window systems to make more informed purchasing decisions based upon the potential and energy savings of alternative window products. The Committee intends that the National Fenestration Rating Council shall be eligible to receive financial and technical assistance provided under this section.

Subsection 6107(b)

This subsection would direct the Secretary, after consulting with the National Institute of Standards and Technology, to develop an energy efficiency rating program for windows and window systems under section 323 of the Energy Policy and Conservation Act

(EPCA) if a voluntary national window rating program, consistent with the objectives of subsection (a), is not established within two years of the date of enactment of this Act.

Subsection 6107(c)

This subsection directs the Federal Trade Commission to prescribe labeling rules under section 324 of EPCA for the rating program established pursuant to either subsection (a) or (b), unless the Commission determines that labeling in accordance with subsections (a) or (b) is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions with respect to any type of window or window system.

Subsection 6107(d)

This subsection states that for the purposes of sections 323 and 324 of EPCA, windows and window systems shall be considered covered products under section 322 unless excluded by the Commission pursuant to subsection (c).

Subsection 6107(e)

Finally, subsection (e) authorizes the appropriation of \$750,000 for each of fiscal years 1992, 1993 and 1994 to carry out the purposes of this section.

Section 6108

The objective of this section is to improve the ability to evaluate the effectiveness of the Nation's energy efficiency policies and programs through the expansion of the scope and frequency of the data it collects and reports on energy use.

Subsection 6108(a)

This subsection directs the Administrator of the Energy Information Administration (the Administrator), pursuant to his existing authority under section 52(a) of the Federal Energy Administration Act of 1974, and after consulting with State and Federal energy officials, representatives of energy-using classes and sectors of the economy, and representatives of energy policy public-interest or research organizations, to expand the scope and frequency of the data the Energy Information Administration collects and reports on energy use in the United States with the objective of significantly improving the ability to evaluate the effectiveness of the Nation's energy efficiency policies and programs. The Administrator is further directed to take into account reporting burdens and the protection of proprietary information as required by law. Finally, subsection (a) sets forth seven specific areas where the Administrator shall consider expanding or increasing data collection.

Subsection 6108(b)

This subsection would require the Administrator to report annually to Congress on the energy efficiency in classes and sectors of the economy, and on any data resulting from implementation of this section.

Subsection 6108(c)

This subsection would require the Administrator to submit an additional report on the conclusions of the Administrator's consideration of establishing reporting requirements and voluntary energy efficiency improvement targets pursuant to paragraph 6108(a)(7). This report shall include an evaluation of the costs and benefits of such reporting requirements and voluntary energy efficiency improvement targets, including recommendations by the Administrator on proposals or activities to improve energy efficiency in energy intensive industries.

Section 6109

This section is designed to promote energy efficiency through support for a national rating program for lamps and luminaries.

Subsection 6109(a)

This subsection directs the Secretary, after consulting with the National Electrical Manufacturers Association, industry representatives and other appropriate organizations, to provide financial and technical assistance to support the voluntary development of a national lamp and luminaire rating program to establish energy efficiency ratings for lamps and luminaries. Such program shall set forth information to enable purchasers of lamps and luminaries to make more informed purchasing decisions based upon the potential and energy savings of alternative lamps and luminaries.

Subsection 6109(b)

This subsection would direct the Secretary, after consulting with the National Institute of Standards and Technology, to develop an energy efficiency rating program for lamps and luminaries under section 323 of the Energy Policy and Conservation Act (EPCA) if a voluntary national lamp and luminaire rating program, consistent with the objectives of subsection (a), is not established within two years of the date of enactment of this Act.

Subsection 6109(c)

This subsection directs the Federal Trade Commission to prescribe labeling rules under section 324 of EPCA for the rating program established pursuant to either subsection (a) or (b), unless the Commission determines that labeling in accordance with subsections (a) or (b) is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions with respect to any type of lamp or luminaire.

Subsection 6109(d)

This subsection states that for the purposes of sections 323 and 324 of EPCA, lamps and luminaries shall be considered covered products under section 322 unless excluded by the Commission pursuant to subsection (c).

Subsection 6109(e)

This subsection authorizes the appropriation of \$750,000 for each of fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

Section 6110

This section would amend title III, Part C, of EPCA by adding a new section 344A to require the Secretary to establish energy efficiency standards for certain energy consuming commercial equipment, to establish energy efficiency labeling requirements for commercial office equipment and to report to Congress regarding potential energy savings from utility distribution transformers.

The new subsection 344A(a) of EPCA sets forth definitions for terms used in the new section. New subsection 344A(b) requires the Secretary, within 12 months of enactment of this Act, to make initial determinations, with respect to lamps, commercial package air conditioning and heating equipment, and utility distribution transformers, as to whether it is practicable to classify such products into types and to prescribe test procedures to measure energy efficiency. The subsection further requires the Secretary to determine whether it is likely that energy efficiency standards would result in significant energy savings, without a reduction in performance, for those products which the Secretary has determined under paragraph (1) that it is practicable to classify and prescribe test procedures.

The new subsection 344A(c) of EPCA would require the Secretary, within 18 months after the date of enactment of this Act, to prescribe test procedures for those products for which the Secretary has determined under subsection (b) that classification into types and testing procedures are practicable and that it is likely that energy efficiency standards would result in significant energy savings without a reduction in performance. In establishing these test procedures, the Secretary shall use existing and generally accepted industry testing procedures when such procedures are practicable and consistent with the objective of increasing energy efficiency to the extent technically feasible and economically justified. Furthermore, in the case of commercial package air conditioning and heating equipment, such test procedures shall be consistent with those generally accepted industry testing procedures or rating procedures, if any, developed by the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) as in effect on the date of enactment of this Act.

Finally, new subsection 344A(c) provides that if such an industry test procedure or rating procedure for commercial package air conditioning and heating equipment is subsequently amended, then the Secretary shall amend the test procedure for the product as necessary to be consistent with the amended industry test procedure or rating procedure unless the Secretary determines, by rule, supported by clear and convincing evidence, that to do so would not meet the purposes of this section. If the Secretary issues a rule containing such a determination, then the rule may establish an

amended test procedure for such product that does meet the purposes of this section.

New subsection 344A(d) would require the Secretary, for those products for which test procedures have been prescribed under subsection (c), within 18 months thereafter, to determine types (or classes) for such products and to develop energy conservation standards for each type (or class) of such products that would be technologically feasible and economically justified. In establishing these standards, the Secretary shall take into consideration the criteria contained in sections 325(l) and (m) of EPCA.

Subsection 344A(d) further requires that the Secretary shall first review existing industry voluntary energy efficiency standards for these products, if any, to determine whether the adoption of existing industry standards would be consistent with the objective of increasing energy efficiency to the extent technically feasible and economically justified. In such a case, the Secretary shall adopt such industry standards. Finally, the remainder of the subsection sets forth the standards to be adopted by the Secretary regarding package air conditioning and heating equipment. These standards shall, upon their effective date, preempt any State or local regulation concerning energy efficiency, and the Secretary is required to periodically, but at least every five years, review and update any standards established pursuant to this section.

New subsection 344A(e) of EPCA regarding labeling, requires that the Federal Trade Commission shall, within twelve months after test procedures are prescribed for a product under subsection (c), prescribe a labeling rule for such product unless the Commission determines that a labeling rule is not economically or technically feasible, would not result in significant energy savings and is not necessary for informational purposes. The subsection further requires that if the Commission determines that labeling is not necessary, but the Secretary has prescribed energy standards for such product, then the Commission shall prescribe a labeling rule designed solely to facilitate enforcement of the requirements of this section and other applicable provisions of law. Finally, the subsection states that a labeling rule for package air conditioning and heating equipment shall be designed solely to facilitate enforcement and other applicable provisions of law in a manner similar to the current labeling requirements for fluorescent lamp ballasts under title III, Part B, of EPCA.

New subsection 344A(f) declares that manufacturers and private labelers of products covered by this section are subject to the requirements of section 326 of EPCA. It is the Committee's intent that manufacturers and labelers of products subject to standards under this section shall be treated in the same general manner as manufacturers and labelers of products subject to standards under title III, Part B of EPCA.

New subsection 344A(g) provides for the enforcement of the section by linking the enforcement of the provisions of the section to the existing enforcement regime of title III, Part B, of EPCA. It is intended that the enforcement regime of the section derives from and is consistent with the existing enforcement regime of title III, Part B, EPCA.

New subsection 344A(h) provides for the energy efficiency labeling of commercial office equipment. This provision is intended to cover several of the most widely used types of commercial office equipment such as copiers, personal computers and printers and for which energy efficiency labeling offers the likelihood of significant energy savings in the commercial sector. This subsection is modeled on, and is intended to be implemented in a manner consistent with, sections 6107 and 6109 of this Act.

New subsection 344A(i) requires the Secretary, not later than 18 months after the date of enactment of the National Energy Security Act of 1991, to evaluate the practicability and cost-effectiveness and potential energy savings of replacing or upgrading existing utility distribution transformers during routine maintenance. The subsection further requires the Secretary to report the findings of the Secretary's evaluation to Congress with recommendations on how such energy savings, if any, could be achieved. It is the Committee's understanding that the replacement of certain components within utility distribution transformers, particularly those using amorphous materials, could increase their efficiency and reduce utility distribution losses. The Committee intends that the Secretary examine the potential benefits of replacing such components, perhaps during scheduled maintenance of such transformers, in order to reduce utility distribution losses and thus effectively increase existing electrical generating capacity.

Section 6111

This section would amend section 2 and title III, Part B, of EPCA so as to add showerheads as a covered product to the existing appliance energy efficiency standards program. Except as otherwise provided, it is the Committee's intent that showerheads shall be treated in a manner consistent with other products covered by title III, Part B.

Subsections 6111(b) and (c)

Subsection (b) adds a definition to section 321 of EPCA, and subsection (c) adds showerheads as a covered product under section 322(a) of EPCA.

Subsection 6111(d)

This subsection amends section 323 of EPCA regarding test procedures to include showerheads and to require that such test procedures shall be in accordance with applicable American National Standards Institute (ANSI) flow rate standards.

Subsection 6111(e)

This subsection amends section 324 of EPCA regarding labeling to require a showerhead label that states whether the product meets the standards of section 325(i) of EPCA in accordance with ANSI marking and labeling requirements.

Subsection 6111(f)

This subsection amends section 324 of EPCA to establish, for showerheads manufactured on or after July 1, 1992, a maximum rate of flow of water of 2.5 gallons per minute, at 80 pounds per

square inch of pressure, or if, before March 1, 1992, ANSI publishes an amended standard for showerheads prescribing a maximum rate of water use that is less than the rate prescribed by the ANSI standard in effect on the date of enactment of this Act, then the rate prescribed in the amended standard becomes effective. This subsection further provides that if, after July 1, 1992, ANSI publishes an amended standard different from that in effect as described above, then within 180 days the Secretary shall publish a notice of the amended standard, to be effective for showerheads manufactured on or after the date that is 90 days after the date of notice. Finally, the subsection provides that the Secretary may not prescribe an amended standard that increases the maximum rate of water use of showerheads over the rate allowed by the standard established on July 1, 1992, unless the Secretary determines that it is in the interest of public health and safety.

Subsection 6111(g)

This subsection amends section 327 of EPCA to provide for the preemption of all state and local showerhead flow rate requirements established after June 15, 1991, and by adding a subsection (h) at the end thereof which provides for the preemption of all flow rate and energy use labeling of showerheads after the date that the Commission prescribes a label pursuant to EPCA.

SUBTITLE B—FEDERAL ENERGY MANAGEMENT

Section 6201

This section amends part 3 of title V of the National Energy Conservation Policy Act (NECPA), the provisions that govern the Department of Energy's (the Department) Federal Energy Management Program. The section would:

- (1) Establish specific deadlines for the installation of energy conservation measures in Federal buildings;
- (2) Require maximum use of shared energy savings contracts and other methods to reduce the Government's cost of energy efficiency investment under the program; and
- (3) Direct the Secretary to develop procedures and methods to select energy service contractors that will promote the use of shared savings contracts.

Subsection 6201(a)

This subsection amends subsection 543(a) of NECPA to require each Federal agency to submit to the Secretary, within two years after the date of enactment of this Act, a list of proposed energy conservation projects for installation in Federal buildings under the control of the agency. The list must include all energy conservation measures with payback periods of less than 10 years using methods developed by the Secretary under section 544 of NECPA. In addition, an agency may exclude from the requirements of the subsection any building or collection of buildings if the head of the agency makes certain findings of impracticability. The Secretary must review all such findings and may reverse the exclusion within 90 days after the findings have been received. Federal facilities that generate or transmit electric energy and the uranium en-

richment facilities of the Department are automatically excluded from the requirements of the subsection.

Section 6201 also amends NECPA to encourage the use of shared energy savings arrangements under title VIII of NECPA. Title VIII authorizes contracts with private firms to implement energy saving measures in exchange for a share of the savings in energy costs resulting from the implementation of the measures. Paragraph 6201(a)(2) requires each agency to include in its plan for meeting the requirements of section 543(a) of NECPA steps to take maximum advantage of contracts under title VIII.

Subsection 6201(b)

This subsection makes technical changes to section 544 of NECPA and requires that agencies shall consider energy efficiency when renewing or entering into a lease after January 1, 1994. Finally, this subsection requires that all government leased space constructed after January 1, 1994 shall meet the Federal building energy code under section 304 of ECPA.

Subsection 6201(c)

This subsection makes clarifying amendment to section 545 of NECPA.

Subsection 6201(d)

This subsection requires the Secretary, within 6 months after the date of enactment and in consultation with the Secretary of Defense and the Administrator of the General Services Administration, to develop simplified and efficient methods and procedures for use by Federal agencies to select energy service contractors for shared savings contracts. It is intended that such procedures reduce the administrative effort and cost to Federal contracting officers and at the same time reduce the project proposal cost and risk to private energy service contractors.

Subsection 6201(f)

This subsection adds several new sections at the end of title V, Part 3, of NECPA. The new section 522 authorizes and encourages Federal agencies to participate in programs conducted by any gas or electric utility for the management of energy demand or for energy conservation in Federally owned or leased facilities. The Committee understands that Federal agencies have not taken full advantage of the programs and opportunities made available by utilities to their customers to encourage energy conservation. The Committee intends that Federal agencies will aggressively pursue such opportunities.

The new section 553 of NECPA directs the Secretary to develop a simplified method of contracting for shared energy savings contract services. The section further sets forth one method which the Secretary may employ in meeting this objective. This proposed method is the general practice employed by Federal agencies in selecting professional architectural and engineering firms and the Committee believes may offer an opportunity for the Secretary to increase Federal use of shared energy savings contracts.

The new section 554 of NECPA requires the Administrator of the General Services Administration (the GSA), in consultation with the Secretary, and within two years of the date of enactment of this Act, to conduct an analysis of significant energy consuming products in the Federal product schedule and to develop and implement a method to identify those products which offer cost-effective opportunities to reduce energy consumption and costs. The new section further requires the Administrator of the GSA to issue guidelines for users of the Federal product schedule to encourage the purchase of identified energy efficient models.

The new section 555 of NECPA requires the Administrator of the GSA, when evaluating bids for the purchase of passenger vehicles and light trucks, to consider the fuel efficiency of those vehicles and the probable fuel and cost savings to the Federal Government of purchasing such vehicles. The Committee understands that the GSA currently considers only the purchase price when evaluating bids for the purchase of Federal vehicles. This new section would encourage, but not require, the GSA to consider the fuel efficiency of such vehicles and thus consider the life-cycle cost and energy savings consequences of vehicle purchases.

The new section 556 of NECPA establishes a program to fund energy efficiency projects in Federally owned facilities. Subsection (a) would require the Secretary, within one year of enactment of the National Energy Security Act of 1991, to establish guidelines for the transfer from the Energy Security Fund, or from appropriations otherwise made available for the purposes of this new section, of up to \$1 million per project to encourage any Federal agency to undertake energy efficiency projects in Federally owned facilities. Subsection (b) requires the Secretary to establish procedures for the receipt of proposals under this section and sets forth the criteria which the Secretary shall use in evaluating those proposals. The Committee intends that these funds are to be highly leveraged and are to be used as an incentive to induce Federal agencies to undertake energy efficiency projects funded primarily with funds other than those made available pursuant to this section. For example, agencies are expected to seek funding for cost-effective projects within their own budget process, to seek assistance from the utilities which provide their energy services, and may obtain assistance from the private sector through the use of shared savings contracts or other innovative financing options.

The Committee notes that the President's April 17, 1991, Executive Order on Federal energy management indicates a new interest on the part of the Administration to undertake cost-effective energy efficiency projects in Federal facilities as would be encouraged by this section.

New subsection 556(c) of NECPA requires the Secretary to report annually, in the supporting documents accompanying the President's budget, on activities conducted under this new section. The report shall include the projects funded, and the anticipated energy and cost savings from such projects.

Finally, new subsection 556(d) of NECPA authorizes up to \$50 million, to remain available until expended, to carry out the purposes of this section.

The new section 557 of NECPA requires the Secretary to establish a financial bonus program, not to exceed \$5000 per award, to reward Federal facility energy managers for outstanding efforts in achieving Federal energy savings. The Secretary is directed, not later than June 1, 1992, to issue procedures for the establishment of a bonus program including the criteria to be used in selecting awards. The Committee intends that awards focus on actual achievements in Federal energy cost savings, but also reflect success in generating utility incentives and energy shared savings contracts in which Federal funds are leveraged to obtain assistance from non-Federal sources.

The new section 557 of NECPA also requires the Secretary to publish an annual report highlighting the achievements of award recipients. Finally, this new section authorizes \$250,000 for each of fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

Section 6202

This section requires the Secretary, within one year after the date of enactment of this Act, to submit a Plan to Congress for the demonstration of commercially viable energy efficiency and renewable energy technologies in Federally owned facilities. The plan shall list eligible technologies and specific candidate sites; the energy, environmental cost savings or other expected benefits; a timetable for implementation; and a process for evaluation of the performance of the technologies. Finally, the Secretary is required to update the Plan every two years.

The Committee recognizes that the Department's research and development efforts continue to introduce new energy efficiency and renewable energy technologies. However, there are often difficulties in commercializing these new technologies and encouraging their use. The Committee intends that the Secretary will use this Plan as an opportunity to investigate, evaluate, and propose specific demonstration projects to encourage the commercialization of energy efficiency and renewable energy technologies.

Section 6203

This section requires the Secretary to evaluate the potential use of the purchasing power of the Federal Government to promote the development and commercialization of energy efficient products and to report to Congress within 2 years of the date of enactment of this Act. The report is also to include a plan to develop such potential. The section authorizes \$250,000 to carry out the provisions of this section.

It is the Committee's intent that the Secretary will consult closely with utilities, manufacturers, and appropriate organizations interested in energy efficiency, to identify specific energy efficient products which the Federal Government could reasonably be expected to purchase in sufficient quantity so as to support commercialization of those products. There are, for example, new technologies for the development of highly efficient refrigerators and freezers. However, manufacturers are reluctant to produce such products because of uncertain market demand. If specific products and their energy efficiency benefits can be identified, then manu-

facturers and the Federal Government may be able to develop arrangements to encourage their commercialization.

SUBTITLE C—UTILITIES

Section 6301(a)

Section 6301 adds a new set of standards to the existing regulatory standards contained in section 111 of Title I of the Public Utility Regulatory Policies Act of 1978 (PURPA). Under the provisions of Title I each State regulatory authority, unless it has previously considered the matter as provided in sections 112 and 124, is required to conduct a formal proceeding to consider whether it should adopt and implement each of the standards set out in section 111. However, under Title I a State regulatory authority may completely reject a standard contained in section 111 as long as it meets the procedural requirements of the title.

Subsection 6301(a)

The new regulatory standards set out in section 6301(a) are added to section 111 of PURPA as a new paragraph (7). Title I of PURPA provides various time requirements concerning the consideration of standards under section 111. For purposes of applying such requirements to the new standards added to section 111, subparagraph (D) of new paragraph (7) provides that any references in Title I to the date of enactment of PURPA shall be deemed references to the date of enactment of the National Energy Security Act of 1991.

The new standard set out in subparagraph (A) of paragraph (7) addresses concerns with respect to the prevailing regulatory treatment of investment in energy efficiency resources and demand side management by regulated electric utilities. Traditional ratemaking practices often act to provide economic disincentives for such investment. Specifically, under the practice in most States any reduction in kilowatt hours sold by a utility reduces the utility's earnings. Yet it is generally recognized that energy efficiency resources conservation (including efficiency of conservation in supply side resources), and other demand side measures (all of which reduce the number of kilowatt hours sold) can in many instances be cost effective ways for a utility to meet its supply obligations. Without rectifying the problems in traditional ratemaking practices, the true potential of these resources probably cannot be realized.

The new standard under subparagraph (A) would simply require State commissions to consider making utility investment in energy conservation, energy efficiency resources and demand side measures as profitable as investment in new generation facilities. Nothing in subparagraph (A) is intended to require State commissions to consider granting supra-normal returns for such investment or not to consider adjusting returns on such investment to reflect the relative risk involved.

The new standard under subparagraph (B) is similar to subparagraph (A), but it is oriented specifically towards efficiency in supply side resources. For example, the Committee is aware that in some instances State ratemaking practices may discourage utilities from using more efficient transformers (which would reduce power loss

in distribution) even though the cost of such transformers is substantially less than the net present value of the electricity that would be saved over the transformers' lifetime.

The new standard under subparagraph (C) sets out criteria and a process for the use of integrated resource planning by electric utilities. Under this standard utilities would conduct a periodic, comprehensive evaluation of potential new energy resources (both supply side and demand side) for purposes of providing adequate and reliable service to their customers at lowest system cost.

The new ratemaking and other standards added to section 111 in new paragraph (7) are only intended to encourage efficiency in the provision of electricity to consumers. The Committee does not intend such standards to be used in any context other than one which would result in less energy usage and correspondingly less consumption of our nation's energy resources. To that extent, these standards are not to be construed as promoting rate recovery for programs that result in fuel-switching or increased energy usage over an existing or available energy alternative. The purpose and intent of this legislation is the achievement of less energy usage through conservation measures and reduction in energy demand.

Subsection 6301(b)

This section requires the Secretary of Energy (the Secretary) to conduct a comprehensive study of least-cost planning.

Section 6302

This section creates a program to provide grants to State regulatory authorities (in an amount not to exceed \$500,000 per authority) for purposes of encouraging the consideration of conservation, energy efficiency resources and demand side management measures as a mechanism for modifying future electricity demand. In determining whether, and in what amount, to make a grant the Secretary is directed to consider the extent to which the State regulatory authority in question has implemented the new standards added by section 6301 of the bill to section 111(d) of PURPA.

Section 6303

This section requires the Southwestern Power Administration (SWPA) and the Southeastern Power Administration (SEPA) each to initiate proceedings for purposes of considering whether to require that each long-term firm power service contract entered into or amended subsequent to one year from date of enactment between such power marketing administration and a non-regulated electric utility contain an article requiring such utility to develop and implement an integrated resource planning program. The definition of integrated resource planning is identical to the one contained in new section 111(d)(7)(C) of PURPA as added by section 6301 of the bill.

The Committee did not make section 6303 applicable to the Bonneville Power Administration because, under the Pacific Northwest Electric Power Planning and Conservation Act (Pub. L. No. 96-301), Bonneville is already deeply involved in integrated resource planning. Similarly, under the Hoover Power Plant Act of 1984 (Pub. L. No. 98-381) customers of the Western Area Power Admin-

istration are already required to implement an energy conservation program. Finally, the assets of the Alaska Power Administration are in the process of being sold.

Section 6303(e) clarifies that SWPA and SEPA shall not require their non-regulated utility customers to prepare, submit or implement integrated resource planning programs if another Federal agency requires such customers or their sole power suppliers to prepare such a program. This subsection is intended to avoid potentially duplicative and burdensome regulation of utilities who are already engaged in extensive integrated resource planning activities pursuant to the regulations or requirements of another Federal agency, such as the Rural Electrification Administration. It makes clear the Committee's intent to require SWPA and SEPA to review, and if appropriate, encourage integrated resource planning activity only with respect to those systems not currently performing those activities.

The Committee recognizes that, in some cases, it may not be practicable for small non-regulated utilities to be required to prepare and file integrated resource planning programs. This is particularly true in the case of small non-regulated utilities that have entered into long-term power sales contracts with a joint action agency or similar entity, whereby the utility is contractually prevented from generating power itself or purchasing from other than existing suppliers. The Committee also recognizes that in the application of section 6303 to small non-regulated utilities, it may be more appropriate for the respective joint action agency to develop and implement an integrated resource planning program on behalf of and as agent for these utilities.

Section 6304

This section requires the Tennessee Valley Authority (TVA) in the exercise of its functions to employ an integrated resource planning program. The definition of integrated resource planning is identical to the one contained in new section 111(d)(7)(C) of PURPA as added by section 6301 of the bill. Section 6304 also directs TVA to provide technical assistance on energy efficiency and renewable energy to its customers and to add major new energy resources to the TVA system only after public opportunity for review and comment in the selection process.

SUBTITLE D—USED OIL ENERGY PRODUCTION

Section 6401

This section states that the purpose of this subtitle is to promote the refining, re-refining and reprocessing of used lubricating oil into fuels and other petroleum products. Each year the Nation uses over 60 million barrels of lubricating oil and carelessly discards more than 10 million barrels into the Nation's soil and water, causing substantial environmental damage. The refining or reprocessing of used oil into lubricating oil or fuel requires less than 5 percent of the energy of producing fuel from virgin crude oil. The reuse of used oil which is currently discarded, could eliminate the need to import roughly 10 million barrels of crude oil each year.

Section 6402

This section would amend section 383 of the Energy Policy and Conservation Act (EPCA) to establish a program to promote the reuse of used oil.

Subsection 6402(a)

Subsection (a) would modify subsection 383(c) of EPCA regarding the development of test procedures for the determination of "substantial equivalency" of reprocessed used oil and new oil for a particular end use.

Subsection 6402(b)

Subsection (b) would add a new subsection (g) at the end of section 383 to establish requirements and incentives for the reuse of used oil.

New paragraph 383(g)(1) of EPCA would require that producers and importers of 100,000 gallons or more per year of lubricating oil shall refine, re-refine or reprocess a certain amount of used oil into petroleum products. The amount of used oil to be refined, re-refined or reprocessed would be equal to at least that amount determined by multiplying the amount of lubricating oil produced or imported that year by such person, by a percentage established by the Secretary of Energy. Producers and importers could comply with this requirement by either refining, re-refining or reprocessing the required amount of used oil into petroleum products, or by purchasing credits from refiners, re-refiners or reprocessors permitted to create credits under the program. These credits would represent an amount of used oil actually refined, re-refined or reprocessed.

New paragraph 383(g)(2) of EPCA would provide that the initial percentage to be established by the Secretary as the annual rate for the refining, re-refining or reprocessing (reuse) of used oil shall be equal to the rate of such reuse that exists on the date of enactment of this new subsection using the most recent data. Each year the percentage of reuse shall be 2 percent higher than the actual rate of reuse for the previous year as determined by the Secretary. This language would, therefore, establish a minimum annual increase in the rate of reuse of 2 percent. If the actual rate of increase were more than 2 percent, then the rate for the following year would be 2 percent above that higher level.

New paragraph 383(g)(3) of EPCA sets forth, under subparagraph (A), the scope of the regulations which the Secretary would be required to promulgate not later than 18 months after the date of enactment of this subsection. These include regulations covering: the producers and importers of lubricating oil; the generators and collectors of used oil; a system by which refiners, re-refiners and reprocessors of used oil would be permitted by the Secretary to create credits for sale to producers and importers; the necessary enforcement and recordkeeping; any other regulations which the Secretary may consider necessary for administering the program; and, finally, regulations to prohibit the mixing of used oil with hazardous wastes or other impurities not associated with its use as a lu-

bricating oil. Any used oil which does become mixed with hazardous wastes is intended to be treated as hazardous waste.

It is the Committee's intent that the Secretary promulgate the minimum of regulations necessary to administer the program and that the Secretary consult with the Administrator of the Environmental Protection Agency prior to promulgating these regulations. The Secretary shall, whenever possible, rely upon existing record-keeping, testing, enforcement and other existing regulations of the Federal Government in order to minimize the regulatory burden of this program.

Finally, new paragraph 383(g)(3) of EPCA sets forth, under subparagraph (B) exemptions from the regulations promulgated under this subsection. These exemptions, under clause (i), cover refineries, classified as S.I.C. number 2911 facilities under the Office of Management and Budget Standard Classification Manual, that refine used oil into fuel or other petroleum products up to the amount which the owner of that facility is required to refine, re-refine or reprocess under paragraph (1)(A). Clause (i) also exempts the facilities of certain lubricant manufacturers classified as S.I.C. number 2899 and 2992 facilities for their reprocessing operations that are an adjunct to their principal activity of blending and compounding lubricants. These specialized reprocessing operations generally reclaim petroleum-based industrial lubricants and metalworking compounds through mechanical or chemical means to remove solid contaminants, water, and other degradation products. Additives for performance characteristics are added to restore the lubricant to its original specifications. Such reprocessing is used by customers to conserve resources, minimize waste, and reduce costs and liabilities.

It is the Committee's intent that this specialized reprocessing not be discouraged by the program created pursuant to this subtitle. Moreover, because many of these industrial and metalworking lubricants are formulated with water, the recycling of these lubricants, if included in the regulations, could distort the credit system. Therefore, this exemption is provided to these reprocessing operations, provided that the facility reclaims the used lubricant under a contract with its customer, the customer retains title to the lubricant being recycled, and the reclaimed product is returned to the customer. These conditions for the exemption take into account the closed loop nature of such reprocessing.

Clause (ii) of subparagraph (C) provides an exemption to electric generation facilities classified as an S.I.C. number 4911 facility under the Office of Management and Budget Standard Classification Manual for used oil that is generated on-site for on-site energy production activities, including storage, use and transportation.

The Secretary, under clause (iii) is authorized and directed to promulgate regulations establishing requirements for those refineries exempt under clause (i). These regulations shall cover the recordkeeping, testing and other matters necessary and appropriate for refining used oil at exempt refineries.

New paragraph 383(g)(4) of EPCA also sets forth, under subparagraph (B), the definitions for this new subsection. These definitions are self-explanatory. However, it is important to point out that two terms, "re-refiner" and "reprocessor" are combined under one defi-

nition, clause (vi). The purpose of having two terms is that the Secretary may find it useful or necessary to distinguish between persons that reprocess used oil by using refining techniques such as distillation, and those that reprocess used oil using other less intensive methods, such as filtration.

New paragraph 383(g)(5) of EPCA authorizes a total of \$2 million in appropriations for the Secretary to carry out responsibilities under subsection (g), and \$3 million for the Secretary of Commerce to carry out responsibilities under Section 383.

New paragraph 383(g)(6) of EPCA directs that the Secretary report annually to Congress on the implementation and operation of this subsection.

Section 6403

This section would amend section 3001 of the Solid Waste Disposal Act (Pub. L. No. 89-272) to prohibit the Administrator of the Environmental Protection Agency from listing or identifying used oil as a hazardous waste. There are two reasons why it is essential to include in this legislation the prohibition against the listing or identification of used oil as a hazardous waste. First, used oil collection and reprocessing programs currently in place, and those that need to be developed or expanded to increase the reuse of used oil, would not be viable were used oil to be listed as a hazardous waste. Such listing would expose the collectors and reproducers of used oil to unacceptable potential legal liabilities. Second, this provision is required to assure that there is adequate capacity to refine, re-refine or reprocess the used oil that would be collected should this bill be enacted. The elimination of the uncertainty regarding the issue of used oil as a hazardous waste, and elimination of the threat of legal liability for the collection and reprocessing of used oil, is essential to the success of this program, and to promoting the reuse of used oil.

Section 6404

This section provides that the authorities under this subtitle shall expire five years after the date of enactment.

SUBTITLE E—STATE, LOCAL, INSULAR AND TRIBAL ASSISTANCE.

Section 6501

The Federal Nonnuclear Energy Research and Development Policy Act of 1974 authorizes the Secretary of Energy (the Secretary) to conduct a broad range of activities to develop new energy technologies. This section would provide guidance to the Secretary in the specific area of providing financial assistance to Insular area governments or private sector institutions working in cooperation with Insular area governments to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy measures which would reduce the dependency of the Insular area on imported fuels and promote development in the Insular area.

Subsection 6501(a)

This subsection sets forth these objectives and the criteria to be used by the Secretary in making grants under this program. Two requirements for receipt of these funds are that the applicant must evidence coordination and cooperation with, and support from, the local energy institutions; and the Secretary shall require at least 20 per centum of the costs of any project under this section to be provided from non-Federal sources.

It is the Committee's intention that this program build upon the effort initiated by the Territorial Energy Assessment completed by the Department of Energy (the Department) in 1982, by following up on the feasibility of numerous potential energy projects identified in that report.

Section 6502

This section would amend title III, Part D of EPCA regarding state energy conservation plans. It would authorize an incentive fund to supplement existing efforts in state and local government building efficiency by encouraging the use of revolving loan funds.

Subsection 6502(a)

This subsection authorizes such sums as may be necessary to carry out the purposes of section 363(f) by amending the existing program authorization under section 365(f).

Subsection 6502(b)

This subsection would amend section 363 of EPCA to authorize the Secretary to give States grants of up to \$1,000,000 for deposit into a State revolving fund designed to finance energy efficiency improvements in State and local government buildings. This subsection also sets forth the criteria which the Secretary shall consider in making such grants. The Committee recognizes that the funding provided to States under this section cannot, by itself, significantly increase energy efficiency in State and local government buildings. These funds are intended to be used as an incentive to encourage States to establish revolving funds, and to encourage States to seek alternative funding sources to fully capitalize such revolving funds. Of particular interest to the Committee is the use of these incentive funds to encourage States to use their share of funds received from oil price control violation settlements (the so-called "oil overcharge" funds) to capitalize State energy efficiency revolving funds. Accordingly, the new subsection 363(f) would require that States receiving funds must provide funding from non-Federal sources sufficient to provide at least 75 percent of the total funds provided for deposit into the revolving fund.

States that are operating existing State or local government building energy efficiency programs need not modify those programs, but in order to receive funds under this section they must operate a revolving loan program.

Section 6503

This section would amend title IV of the EPCA to authorize supplemental grants to recipients of Low-Income Home Weatheriza-

tion grants to cover the costs associated with the development and implementation of arrangements by which additional funding would be made available to the program, and to cover the costs associated with the exchange of information between various State and local weatherization programs.

The new section 414A of ECPA authorizes a new grant program to build the professional capability of local and State weatherization agencies to make arrangements for providing new resources to low income weatherization programs. Grants awarded competitively will provide staff and technical assistance to weatherization agencies to leverage additional resources from private sector and other entities, including investor-owned and non-regulated utilities. Such arrangements may allow weatherization agencies to participate in utility least-cost planning projects.

The Secretary shall make grants for up to 3 years as needed to permit orderly completion of planning cycles. In selecting grantees, the Secretary shall give special consideration to projects which shall have the possibility of providing the greatest benefits to eligible low income households.

The new section 414B of ECPA authorizes a new grant program to provide State and local weatherization agencies, or groups of such agencies, with the ability to evaluate, record, and communicate successful innovations to public and private sector providers of energy conservation services in other States and regions. The Secretary is expected to select projects identified and managed by the providers themselves, and which have the greatest promise of improving the energy efficiency of low income housing units.

In establishing these grants the Committee recognizes the expertise developed by the local agencies administering the Department program in the existing buildings sector and intends to provide a number of these agencies with the staffing and professional support needed both to share that expertise with others working in this sector, and to undertake projects that will leverage private resources into low income weatherization programs.

Section 6504

This section would amend section 362 of the EPCA by adding a new optional program to the existing State Energy Conservation Program (SECP) to authorize the use of Federal SECP funds to provide training and education to building designers and contractors involved in building design or in the sale, installation and maintenance of building energy systems and equipment.

States that are currently operating builder or contractor training programs for energy systems do not need to modify their programs. If States wish to adopt new programs, then they are encouraged to seek broad participation in the development of such programs without any mandate as to the specific implementation strategy. That implementation strategy is left to that State's discretion, except that designers and contractors who have successfully completed a training course operated pursuant to this section shall be presented a certificate of completion at the end of such course.

Section 6505

This section would amend section 363 of EPCA to authorize the Secretary to provide competitive grants to supplement State program activities conducted pursuant to section 362(d)(4), to the extent that they support projects designed to increase public awareness and understanding of energy issues, or to train educators to use existing energy related information for teaching purposes. In this case the term "energy" is intended to be interpreted broadly to include, but not be limited to, energy resources such as oil, gas, nuclear, coal, renewable energy and energy efficiency; to include energy issues, such as production, national security, environmental impacts and economic competitiveness; and to include policy options such as production and efficiency incentives, alternative fuels, and enhanced research.

The Committee intends that applications for such grants be made through, and administered by, State Energy Conservation Programs. The Committee further intends that there shall be a limited number of such grants which have a high potential for impact upon the intended audience and broad participation from various non-Federal sectors. It is intended that teacher training be focused on the primary and secondary school levels. Because of the large amount of energy information currently available, the Committee intends that teacher training activities focus on adapting such existing materials for teaching purposes.

Section 6506

The Federal Nonnuclear Energy Research and Development Policy Act of 1974 authorizes the Secretary to conduct a broad range of activities to develop new energy technologies. This section would provide guidance to the Secretary in the specific area of providing financial assistance to tribal governments, or private sector institutions working in cooperation with tribal governments, to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy projects on tribal lands.

The Committee recognizes that many tribal lands are remote and may be unusually dependent on expensive energy supplies. These conditions, and local renewable energy resources, may make energy efficiency or renewable energy projects more economical than in other areas. However, such governments do not have the financial or technical capabilities to assess these energy resource alternatives. The grants provided under this section may cover the costs of technical assistance in resource assessment, feasibility analysis, technology transfer, and the resolution of other technical, financial or management issues identified by the applicants.

Subsection 6506(b)

This subsection requires that grant applicants must evidence coordination and cooperation with, and support from, local educational institutions and the affected local energy institutions, if any. The Committee establishes these requirements in recognition of the need for projects to have broad institutional support if they are to be sustained.

Subsection 6506(c)

This subsection sets forth the criteria which the Secretary must consider in determining the amount of financial assistance to be provided for a proposed project.

Subsections 6506(d) and (e)

Subsection (d) establishes the Federal/non-Federal cost share requirements for projects under this section. Finally, subsection (e) states that for the purposes of this section, the term "tribal government" shall include Native Alaskan governments.

Section 6507

Currently, Section 362(c)(5) of EPCA requires, as a condition for the receipt of Federal funds under the SECP, that States must allow vehicles to turn right at a red stop light after stopping. This section amends section 362(c)(5) to expand the requirement so that States must also allow vehicles to turn left from a one-way street onto a one-way street at a red stop light after stopping.

It is the Committee's understanding that many States already allow such left turn on red, and that such a policy, if expanded, would reduce overall national petroleum consumption by reducing the amount of time vehicles spend idling at stop lights. The Committee notes that the underlying statute provides that these requirements must be consistent with public safety.

SUBTITLE F—LIHEAP OPTIONS PILOT PROGRAM

Subtitle F directs the Secretary of Health and Human Services (HHS) to study the possibility of using Low Income Home Energy Assistance Program (LIHEAP) funds to purchase futures or options contracts for fuel in order to use LIHEAP funds more efficiently, and to report to Congress. This subtitle also authorizes HHS to conduct a pilot program using futures or options on futures, and to conduct an educational program on the use of futures for fuel to increase the effectiveness of fuel purchase or assistance programs.

Section 6601

This section states the short title for the subtitle.

Section 6602

This section requires the Secretary of Health and Human Services (HHS) in consultation with the Secretary of Energy, to conduct a study of the potential use of LIHEAP funds to purchase futures or options contracts for fuel through registered commodities brokers. The study shall examine any potential advantages of the use of LIHEAP funds in this manner including: protection for Federal, State and local government entities which provide low-income fuel assistance from unanticipated surges in the price of fuel for residential use; more efficient use of such funds; and more fuel assistance for low-income persons without an increase in Federal expenditures. The study shall also examine potential disadvantages of the use of such funds including reduction in funds available for fuel assistance, and waste, fraud, or abuse.

The required study shall also examine the extent to which new authority would be needed for the use of such funds; the extent to which the use of such funds would conflict with existing law governing the Federal budget; the extent to which the use of futures and options on futures could provide effective protection for consumer cooperatives (or any organization whose purpose is to purchase fuel in bulk for residential use) from unanticipated surges in the price of fuel; and how government entities and consumer cooperatives or other organizations could be educated in the prudent use of futures and options on futures to maximize their purchasing effectiveness and protect themselves against unanticipated surges in the price of fuel for residential use. The Secretary of HHS is required to transmit the study to Congress within 12 months after the date of enactment of this Act.

Section 6603

This section provides authority for the Secretary of HHS, in consultation with the Secretary of Energy, to conduct pilot programs in cooperation with one or more governmental or tribal recipients of funds in which the recipient uses futures and options on futures in its LIHEAP assistance program. The section also authorizes the Secretary to conduct a pilot program to educate appropriate organizations on the use of futures and options on futures.

Section 6604

This section sets forth definitions of terms used in this subtitle.

Title VII—Oil and Gas Leasing in the Arctic National Wildlife Refuge

SUBTITLE A—STATEMENT OF PURPOSE AND DEFINITIONS

Section 7101

This section sets forth the purpose and policy of the title.

Section 7102

This section sets forth definitions.

SUBTITLE B—CONGRESSIONAL DETERMINATION OF COMPATIBILITY

Section 7201

This section sets forth a congressional determination of compatibility and states that no further findings or determinations of compatibility by the Secretary of the Interior (for purposes of this title, the Secretary) under the National Wildlife Refuge System Administration Act are required to implement this determination.

In making such a determination, the Committee notes the unique status of the Coastal Plain resulting from the provisions in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) requiring a special study of the area's wilderness, wildlife, energy, and other values and directing that Congress be the final arbiter of the competing interests in this area. The language in the reported bill concerning compatibility should not be viewed as a precedent for other units of the refuge system or as a precedent for other non-oil and gas related uses in ANWR.

The Committee is aware that the so-called "compatibility test" under the Wildlife Refuge Administration Act is not a balancing test of competing values. Its application and the standards to be used in making such a determination are spelled out in some detail in the U.S. Fish and Wildlife Service Refuge Manual and are not affected as they apply to other refuge units or non-oil and gas related activities in ANWR.

SUBTITLE C—COASTAL PLAIN COMPETITIVE LEASING PROGRAM

Subsection 7301(a)

This subsection states that Congress directs the Secretary and other appropriate Federal officers and agencies to take such actions as are necessary to establish and implement a competitive oil and gas leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain.

Subsection 7301(b)

This subsection provides that this title shall be the sole authority for leasing on the Coastal Plain.

Subsection 7301(c)

This subsection provides that the Coastal Plain shall be considered "Federal land" for purposes of the Federal Oil and Gas Royalty Management Act of 1982.

Subsection 7302(a)

This subsection provides that the Secretary shall prescribe such rules and regulations as may be necessary to carry out the purposes and provisions of the title, including rules and regulations relating to protection of the environment of the Coastal Plain, as required by subtitle D of the title. Such rules and regulations shall be promulgated within nine months after the date of enactment of the title.

Subsection 7302(b)

This subsection provides that in the formulation and promulgation of rules and regulations under the title, the Secretary shall give due consideration to the views of appropriate officials of the State of Alaska and the Government of Canada and shall consult with the Environmental Protection Agency and the Army Corps of Engineers in developing rules and regulations relating to the environment.

Subsection 7302(c)

This subsection provides that the Secretary shall periodically review and, if appropriate, revise the rules and regulations.

Subsection 7303(a)

This subsection provides that the "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain prepared pursuant to section 1002 of the ANILCA and section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), is found by

the Congress to be adequate to satisfy the legal requirements under NEPA with respect to actions authorized to be taken by the Secretary to develop and promulgate the regulations for the establishment of the leasing program prior to conducting the first lease sale.

Subsection 7303(b)

This subsection provides that except as provided in subsection (a), nothing in the title shall be considered or construed as otherwise limiting or affecting in any way the applicability of section 102(2)(C) of NEPA to all phases of oil and gas leasing, exploration, development and production and related activities conducted under or associated with the leasing program authorized by the title, nor shall anything in the title be considered or construed as in any way limiting or affecting the applicability of any other Federal or State law relating to the protection of the environment.

Subsection 7304(a)

This subsection provides that lands may be leased pursuant to the provisions of the title to any person qualified to obtain a lease for deposits of oil and gas under the Mineral Leasing Act, as amended.

Subsection 7304(b)

This subsection provides that the Secretary shall, by regulation, establish procedures for certain specified activities.

Subsection 7304(c)

This subsection provides that the Secretary shall, by regulation, provide for lease sales of lands on the Coastal Plain. When lease sales are to be held, they shall occur after the nomination process. For the first lease sale, the Secretary shall, consistent with the requirements set forth in subtitle D of the title, offer for lease those acres receiving the greatest number of nominations, but not to exceed a total of 300,000 acres. If the total acreage nominated is less than 300,000 acres, he shall include in such sale any other acreage which he believes has the highest resource potential, but in no event shall more than 300,000 acres of the Coastal Plain be offered in such sale. Thereafter, no more than 300,000 acres of the Coastal Plain may be leased in any one lease sale. The initial lease sale shall be held within eighteen months of the issuance of final regulations by the Secretary. The second lease sale shall be held thirty-six months after the initial sale, with additional sales conducted every twenty-four months thereafter so long as sufficient interest in development exists to warrant, in the Secretary's judgment, the conduct of such sales.

Subsection 7304(d)

This subsection provides that areas of the Coastal Plain deemed by the Secretary to be of particular environmental sensitivity may be excluded from leasing by the Secretary and that notice shall be provided to the specified appropriate Committees of the Congress. If the Secretary later determines that exploration, development, or production will result in no significant adverse effect on fish and

wildlife, their habitat, and the environment, the Secretary shall, consistent with the provisions of subsection (c), offer such lands for leasing.

Subsection 7305(a)

This subsection provides that the Secretary is authorized to grant to the highest responsible qualified bidder by sealed competitive cash bonus bid any lands to be leased on the Coastal Plain upon payment by the lessee of such bonus as may be accepted by the Secretary. The Secretary is to ensure the receipt of fair market value. The royalty shall be fixed in the lease and shall be not less than twelve and one-half per centum in amount or value of the production removed or sold from the lease.

Subsection 7305(b)

This subsection provides that the Secretary shall not issue a lease or approve the assignment or sublease of any lease if the Secretary finds that the entity has failed or refused to comply in any material respect with the reclamation requirements and other standards established for any prior oil and gas lease pursuant to this or any other Federal law. The remaining provisions of the subsection are self-explanatory.

Subsection 7305(c)

This subsection provides that following each notice of a proposed lease sale and before the acceptance of bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to conduct an antitrust review of each lease sale. The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary, including the nonacceptance of any bid or the imposition of terms or conditions on any lease, as may be appropriate to prevent any situation inconsistent with the antitrust laws. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease would create or maintain a situation inconsistent with the antitrust laws, the Secretary may refuse to accept an otherwise qualified bid for such lease or modify or impose terms or conditions on the lease. The Secretary may issue a lease notwithstanding adverse advice from the Attorney General, or refuse to impose recommended terms or conditions, if he makes certain specific findings. The remaining provisions in the subsection are self-explanatory.

Subsection 7305(d)

This subsection provides that no lease issued under the title may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with, and give due consideration to the views of, the Attorney General.

Subsection 7305(e)

This subsection provides that nothing in the title shall be deemed to convey to any person, association, corporation, or other

business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law. It is the intent of the Committee that the findings of any antitrust review shall not create any immunity or defenses in any private or government antitrust actions.

Subsection 7305(f)

This subsection sets forth definitions.

Section 7306

This section sets forth lease terms and conditions. A lease tract is to consist of a compact area not to exceed 2,560 acres, or four surveyed or protracted sections, whichever is larger. However, the Secretary is given the authority to lease on a case-by-case basis units of up to 3,840 acres in certain limited circumstances. The remaining provisions are self-explanatory.

Subsection 7307(a)

This subsection provides that all exploration activities pursuant to any lease issued or maintained under the title shall be conducted in accordance with an approved exploration plan or an approved revision of such plan. The remaining provisions of the subsection are self-explanatory.

Subsection 7307(b)

This subsection provides that all development and production pursuant to a lease issued or maintained pursuant to the title shall be conducted in accordance with an approved development and production plan. The remaining provisions of the subsection are self-explanatory.

Subsection 7307(c)

This subsection sets forth information to be included in exploration plans and development and production plans where applicable.

Subsection 7307(d)

This subsection sets forth procedures for plan approval. The provisions are self-explanatory.

Subsection 7307(e)

This subsection provides that if at any time while activities are being carried out under a plan approved under this section, the Secretary, on the basis of available information, determines that the continuation of any particular activity under the plan is likely to result in a significant adverse effect on fish or wildlife, their habitat, or the environment, the Secretary, after consultation with the lessee shall: (1) make modifications to part or all of the plan as necessary or appropriate to avoid the significant adverse effect; (2) temporarily suspend part or all of the drilling or related activity under the plan for such time as the Secretary considers necessary or appropriate to avoid such significant adverse effect; or (3) terminate and cancel the plan where actions under paragraphs (1) or (2) will not avoid the significant adverse effect.

Subsection 7308(a)

This subsection sets forth the requirement for a bond, surety or other financial arrangement. The provisions of the subsection are self-explanatory.

Subsection 7308(b)

This subsection sets forth the requirements relating to the amount of the bond, surety, or other financial arrangement. The provisions of the subsection are self-explanatory.

Subsection 7308(c)

This subsection provides that in the event that an approved exploration or development and production plan is revised, the Secretary may adjust the amount of the bond, surety or financial arrangement to conform to such modified plan.

Subsection 7308(d)

This subsection provides that the responsibility and liability of the lessee and its surety under the bond, surety or other financial arrangement shall continue until such time as the Secretary determines that there has been compliance with the terms and conditions of the lease and all applicable law.

Subsection 7308(e)

This subsection provides that within sixty days after determining that there has been compliance with the terms and conditions of the lease and all applicable laws, the Secretary, after consultation with affected Federal and State agencies, shall notify the lessee that the period of liability under the bond, surety or financial arrangement has been terminated.

Section 7309

This section provides that the Secretary may direct or assent to the suspension of operations and production under any lease granted under the terms of this title: (1) in the interest of conservation of the resource; (2) where there is no available system to transport the resource; or (3) where there is a threat of significant adverse effect upon fish or wildlife, their habitat or the environment. If a suspension is directed or assented to by the Secretary, any payment of rental prescribed by such lease shall be suspended during such period of suspension of operations and production, and the term of the lease shall be extended by adding any such suspension period thereto.

Subsection 7310(a)

This subsection sets forth the requirements relating to cancellation of nonproducing leases. The provisions of the subsection are self-explanatory.

Subsection 7310(b)

This subsection sets forth the requirements relating to cancellation of producing leases. The provisions of the subsection are self-explanatory.

Paragraph 7310(c)(1) provides that in addition to the authority for lease cancellation provided for by subsections (a) and (b) of this section, any lease may be canceled at any time, if the Secretary determines, after a hearing, that: (A) continued activity pursuant to such lease is likely to result in a significant adverse effect to fish or wildlife, their habitat, or the environment, or is likely to result in serious harm or damage to human life, to property, or to the national security or defense; and (B) the likelihood of a significant adverse effect will not disappear within a reasonable period of time or the threat of harm or damage will not disappear or decrease to any acceptable extent within a reasonable period of time.

Paragraph 7310(c)(2) provides that cancellation under subsection (c) shall not occur unless and until operations under such lease or permit shall have been under suspension, or temporary prohibition, by the Secretary, with due extension of any lease term continuously for a period of five years, or for a lesser period upon request of the lessee.

Paragraph 7310(c)(3) provides that cancellation under subsection (c) shall entitle the lessee to receive certain specified compensation.

Subsection 7310(d)

This subsection is self-explanatory.

Section 7311

This section provides that no lease issued under the authority of the title shall be assigned or sublet, except with the consent of the Secretary.

Section 7312

This section provides that the lessee may, at the discretion of the Secretary, be permitted at any time to make written relinquishment of all rights under any lease issued pursuant to this title. The Secretary shall accept the relinquishment by the lessee of any lease issued under this title where there has not been surface disturbance on the lands covered by the lease.

Section 7313

This section provides that the Secretary shall require to the greatest extent practicable, that lessees unite with each other in collectively adopting and operating under a cooperative or unit plan of development for operation of such pool, field, or like area, or any part thereof. The Secretary is authorized and directed to enter into such agreements as are necessary or appropriate for the protection of the United States against drainage.

Section 7314

This section sets forth requirements relating to oil and gas information. The provisions of the section are self-explanatory.

Subsection 7315(a)

This subsection provides that except as provided in section 7316 of the title, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with, any lease issued under the title. Proceedings may be institut-

ed in the judicial district in which any defendant resides or may be found, or in the judicial district in which the Coastal Plain is located.

Subsection 7315(b)

This subsection provides that at the request of the Secretary, the Attorney General or a United States Attorney shall institute a civil action in the district court of the United States for the district in which any defendant resides or may be found, or in the judicial district in which the Coastal Plain is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of the title, any regulation or order issued under this title, or any term of a lease issued pursuant to the title.

Subsection 7315(c)

This subsection authorizes civil penalties of not more than \$10,000 for each day of the continuance of a failure to comply with the title, a lease term, or a regulation or order issued under the title, after notice of such failure and expiration of any reasonable period allowed for corrective action. The remaining provisions of the subsection are self-explanatory.

Subsection 7315(d)

This subsection provides for criminal penalties pursuant to Title 18 of the United States Code or imprisonment for not more than ten years, or both. The remaining provisions of the subsection are self-explanatory.

Subsection 7315(e)

This subsection sets forth provisions relating to the liability of corporate officers and agents for violations by a corporation or other entity. The provisions of the subsection are self-explanatory.

Subsection 7315(f)

This subsection is self-explanatory.

Subsection 7315(g)

This subsection provides that notwithstanding any other provision of law, if any discharge or substantial threat of discharge of oil, hazardous or toxic substances, or any other pollutant has occurred in any area of the Coastal Plain or adjacent waters, each responsible party shall be jointly, severally and strictly liable for the removal costs and damages specified in the subsection that result from the incident. Damages recoverable for economic loss under this section include, but are not limited to: (a) damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares, which shall be recoverable by the United States, the State of Alaska, or a political subdivision thereof; (2) damages due to loss or impairment of earning capacity, which shall be recoverable by any claimant; and (3) damages for net costs of providing increased or additional public services during or after removal activities, which shall be recoverable by the United States, the State of Alaska, or a political subdivision thereof. The subsection does not affect the applicability of other laws related to discharge of oil or hazardous or

toxic substances. The remaining provisions of the subsection are self-explanatory.

Section 7316

This section addresses judicial review. It requires that all challenges to actions under this section be brought in a timely manner and not be raised by a defendant for review during an enforcement proceeding. The remaining provisions of the section are self-explanatory.

Section 7317

This section is self-explanatory.

Subsection 7318(a)

This subsection provides that the prohibitions and limitations contained in section 1003 of ANILCA, insofar as they have application to lands or interests therein owned by the Inupiat Eskimo people within the Arctic National Wildlife Refuge, but outside the Coastal Plain, are repealed.

For the purpose of this title, the Committee intends that the term "Inupiat Eskimo people" shall mean the Kaktovik Inupiat Corporation (KIC) and Arctic Slope Regional Corporation (ASRC), Alaska Native Claims Settlement Act (ANCSA) corporations established by Inupiat Eskimo people of Alaska's North Slope.

Subsection 7318(b)

This subsection provides that the prohibitions and limitations contained in section 1003 of ANILCA, insofar as they have application to lands or interests therein owned by the Inupiat Eskimo people within the Coastal Plain are repealed as of the day after the first lease sale is held pursuant to the title. With respect to the lands and interests therein described in the subsection, no exploratory drilling activities shall be authorized until the day after such lease sale.

Subsection 7318(c)

This subsection provides that the substantive provisions of the final regulations issued pursuant to this title which establish environmental stipulations, terms and conditions for oil and gas leasing on the Coastal Plain are applicable to the exploration and development of all subsurface property interests owned by the Inupiat Eskimo people within the Arctic National Wildlife Refuge. Prior to issuance of such regulations, oil and gas exploration and development activities on the land and interests therein described in subsection 7318(a), shall be governed by the stipulations set forth in Appendix 2 of the August 9, 1983 agreement between the Arctic Slope Regional Corporation and the United States.

Subsection 7318(d)

This subsection sets forth procedures for the bringing of claims for money damages or other available relief by the Arctic Slope Regional Corporation or Kaktovik Inupiat Corporation alleging that the provisions of the title constitute a taking of contract or property rights under the Fifth Amendment of the Constitution.

During the 100th Congress, the Committee added a provision to several measures reported from the Committee prohibiting the Secretary of the Interior from conveying land, by exchange or otherwise, located within the Coastal Plain of ANWR without prior approval by Act of Congress. This language was included in a free standing measure (S. 1493); the Arctic Coastal Plain Oil and Gas Leasing Act (S. 2214); and the Alaska Submerged Lands Act (H.R. 278). While neither of the first two measures was considered by the Senate, the Submerged Lands Act was signed into law on October 15, 1987. (Pub. L. No. 100-130).

The Committee adopted this language in response to a proposal by the Department of the Interior to exchange approximately 891,000 acres of inholdings owned by various Alaska Native Corporations inside wildlife refuges in Alaska for approximately 166,000 acres of Federal oil and gas interests in the Coastal Plain of ANWR. The Committee included this language in the Submerged Lands Act to ensure that the Congress, not the Secretary of the Interior, would make the final decision regarding when and under what conditions ANWR would be opened for oil and gas leasing.

The Committee notes that this legislation does not address the land exchange issue. It does not affect the existing statutory prohibition on such exchanges without prior approval of the Congress, and the Committee has no intention of changing that law.

The Committee reiterates that it has serious policy and other reservations regarding these exchanges. Many of these concerns were discussed in a 1988 report from the General Accounting Office which was highly critical of various aspects of the proposed exchanges and recommended that further consideration of the exchanges be discontinued. (GAO/RCED-88-179).

Likewise, the Committee strongly urges the proponents of these exchanges not to pursue them as it is virtually certain that neither the Committee nor the Congress would ever approve them.

As noted above, although the primary purpose of the provision in the Submerged Lands Act was to address the issue of the proposed land exchanges, the language prohibits any conveyance, by exchange or otherwise, other than land validly selected prior to July 28, 1987, without prior approval by Congress.

The Committee is aware that the Kaktovik Inupiat Corporation contends that under ANCSA and ANILCA, it has an entitlement to 92,160 acres of land in the vicinity of the Village. At the current time, KIC has not selected its full land entitlement and the Department of the Interior has indicated that KIC is likely to be underselected by approximately 2,400 acres. The Committee recognizes that the language (section 201) of the Submerged Lands Act, in its attempt to prevent future land exchanges in the Coastal Plain, may also operate to prevent the conveyance of the surface estate of these lands to KIC and the subsurface estate of these lands to ASRC in accordance with the provisions of ANCSA and ANILCA.

While the Committee did not address this matter in the bill as reported, the Committee did indicate its concern that neither the Submerged Lands Act nor this legislation, which authorizes oil and gas leasing in the Coastal Plain, should preclude KIC and ASRC from receiving the lands to which they are otherwise entitled. The Committee believes that every effort should be made to ensure that

KIC's remaining land selection rights in the Coastal Plain are concluded prior to the creation of third-party property interests, such as leases in the Coastal Plain. The Committee encourages KIC and the BLM to promptly identify lands within the original ANCSA withdrawal for KIC to fulfill its remaining 2,400 acre entitlement so that this issue can be resolved as expeditiously as possible.

SUBTITLE D—COASTAL PLAIN ENVIRONMENTAL PROTECTION

Subsection 7401(a)

This subsection provides that the Secretary shall administer the provisions of this title through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other provisions that ensure the oil and gas exploration, development, and production activities on the Coastal Plain will result in no significant adverse effect on fish and wildlife, their habitat, and the environment, and that shall require the application of the best commercially available technology for oil and gas exploration, development, and production, on all new exploration, development, and production operations, and whenever practicable, on existing operations.

The Committee does not intend that the environmental standard contained in this bill, i.e., "no significant adverse effects on fish and wildlife, their habitat, and environment", be interpreted to prohibit all leasing, development and production in ANWR. At the same time, the Committee recognizes that when applied on a case-by-case basis the standard may indeed result in certain activities being precluded or prohibited. The Committee recognizes that if exploration, development and production of oil and gas are to occur as authorized, certain facilities necessary to those activities will be required and certain impacts on the environment are inevitable. However, the bill requires that those activities, while expected and authorized, will be conducted in a manner which will result in no significant adverse effects on the environment. This standard is expected to be interpreted reasonably.

The Committee does not intend the "no significant adverse effect" standard to be equated to the standard applicable under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) for determining whether preparation of any environmental impact statement is required. The Committee anticipates that environmental impact statements may be required at various steps in the leasing process. This is not to say, however, that because an action is deemed to be a "major Federal action significantly affecting the quality of the human environment" for the purposes of NEPA that it also would ipso facto result in a "significant adverse effect on fish and wildlife, their habitat, or the environment" within the context of the Arctic Coastal Plain Competitive Oil and Gas Leasing Act.

The Committee is mindful that the standard in NEPA is a procedural one, i.e., a standard used to determine whether the environmental impact statement process must be undertaken. The Committee intends the "no significant adverse effect" standard to be a substantive standard, and thus expects that the NEPA standard and the standard in this Act will be construed to have different meanings. In addition, the plain language of the standards is differ-

ent, and the Committee therefore expects that the standards would not be construed to be identical.

The legislation contains detailed directives relating to the stipulations, conditions and mitigation requirements governing oil and gas exploration, development and production. The Committee believes that if these requirements, as well as other applicable Federal and State laws, are complied with, there can be a meaningful program of oil and gas development without significant adverse effects on fish and wildlife, their habitat, and the environment.

The passage of this title is not intended to affect the standards for environmental protection set forth in other statutes, such as the Clean Air Act and the Clean Water Act, and their applicability to the Coastal Plain. The standards of each statute must be independently addressed and independently satisfied.

Subsection 7401(b)

This subsection provides that the Secretary shall also require, with respect to any proposed drilling and related activities, that (1) a site-specific assessment be made of the probable effects, if any, that the drilling or related activities will have on fish and wildlife, their habitat, and the environment; (2) a mitigation plan be implemented to avoid, minimize or compensate (in that order and to the extent practicable) any adverse effect assessed under paragraph (1) of the subsection; and (3) the development of the mitigation plan shall occur after consultation with the agency or agencies having jurisdiction over matters mitigated by the plan.

Subsection 7402(a)

This subsection provides that prior to implementing the leasing program authorized by subtitle C of this title, the Secretary shall prepare and promulgate regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other measures designed to ensure that the activities undertaken in the Coastal Plain authorized by the title are conducted in a manner consistent with the purposes and environmental requirements of the title.

Subsection 7402(b)

This subsection provides that the proposed regulations, lease terms, conditions, restrictions, prohibitions, and stipulations for the leasing program authorized by subtitle C of this title shall require compliance with all applicable provisions of Federal and State environmental law and shall also require:

(1) As a minimum, the safety and environmental mitigation measures set forth in items one through twenty-nine (1 through 29) at pages 167 through 169 of the "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain;

(2) Seasonal limitations on exploration, development and related activities, where necessary, to avoid significant adverse effects during periods of concentrated fish and wildlife breeding, denning, nesting, spawning and migration;

(3) That exploration activities, except for surface geological studies, be limited to the period between approximately November 1 and May 1 and that exploration activities will be

supported by ice roads, winter trails with adequate snow cover, ice pads, ice airstrips, and air transport methods: *Provided*, That such exploration activities may be permitted at other times if the Secretary determines, after affording an opportunity for public comment and review, that special circumstances exist necessitating that exploration activities be conducted at other times of the year and he finds that such exploration will have no significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain.

(4) Design safety and construction standards for all pipelines and any access and service roads;

(5) Prohibitions on public access and use on all pipeline access and service roads;

(6) Stringent reclamation and rehabilitation requirements, consistent with the standards set forth in this Act, requiring the removal from the Coastal Plain of all oil and gas development and production facilities, structures and equipment upon completion of oil and gas production operations: *Provided*, That the Secretary may exempt from the requirements of this paragraph those facilities, structures or equipment which the Secretary determines would assist in the management of the Arctic National Wildlife Refuge and which are donated to the United States for that purpose;

(7) Appropriate prohibitions or restrictions on access by all modes of transportation;

(8) Appropriate prohibitions or restrictions on sand and gravel extraction;

(9) Consolidation of facility siting;

(10) Appropriate prohibitions or restrictions on use of explosives;

(11) Avoidance, to the extent practicable, of springs, streams and river systems; the protection of natural surface drainage patterns, wetlands, and riparian habitats; and the regulation of methods or techniques for developing or transporting adequate supplies of water for exploratory drilling;

(12) Avoidance or reduction of air traffic-related disturbance to fish and wildlife;

(13) Treatment and disposal of hazardous and toxic wastes, solid wastes, reserve pit fluids, drilling muds and cuttings, and domestic wastewater, in accordance with applicable Federal and State environmental law;

(14) Fuel storage and oil spill contingency planning;

(15) Research, monitoring and reporting requirements;

(16) Field crew environmental briefings;

(17) Avoidance of significant adverse effects upon subsistence hunting, fishing, and trapping by subsistence users;

(18) Compliance with applicable air and water quality standards;

(19) Appropriate seasonal and safety zone designations around well sites within which subsistence hunting and trapping would be limited;

(20) Reasonable stipulations for protection of cultural and archeological resources; and

(21) All other protective environmental stipulations, restrictions, terms, and conditions deemed necessary by the Secretary.

Subsection 7402(c)

This subsection provides that in preparing and promulgating regulations, lease terms, conditions, restrictions, prohibitions, and stipulations under this section, the Secretary shall consider: (1) the environmental protection standards which governed the initial Coastal Plain exploration program (50 Code of Federal Regulations 37.31-33); (2) the land use stipulations for exploratory drilling on the KIC-ASRC private lands which are set forth in Appendix 2 of the August 9, 1983, agreement between Arctic Slope Regional Corporation and the United States; and (3) the operational stipulations for Koniag ANWR Interest lands contained in the draft Agreement between Koniag, Inc. and the United States of America on file with the Secretary of the Interior on December 1, 1987.

Subsection 7403(a)

This subsection designates the Sadlerochit Spring area to be a Special Area. The remaining provisions of the subsection are self-explanatory.

Subsection 7403(b)

This subsection authorizes the Secretary to designate other areas of the Coastal Plain as Special Areas if the Secretary determines they are of unique character and interest so as to require such special protection. The remaining provisions of the subsection are self-explanatory.

Subsection 7404(a)

This subsection requires the Secretary, after providing for public notice and comment, to prepare and update periodically a plan to govern, guide, and direct the siting and construction of facilities for the exploration, development, production, and transportation of Coastal Plain oil and gas resources. The subsection sets forth objectives for the plan.

Subsection 7404(b)

This subsection provides that the plan shall supplement any comprehensive conservation plan prepared pursuant to the requirements of section 304(g) of ANILCA.

Section 7405

This section provides that notwithstanding title XI of ANILCA, the Secretary is authorized to grant under section 28 of the Mineral Leasing Act rights-of-way and easements across the Coastal Plain for the transportation of oil and gas under such terms and conditions as may be necessary so as not to result in a significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain. Such terms and conditions shall include requirements that facilities be sited or modified so as to avoid unnecessary duplication of roads and pipelines. The comprehensive

oil and gas leasing and development regulations issued pursuant to the Act shall include provisions regarding the granting of rights-of-way across the Coastal Plain.

Section 7406

This section provides that in addition to any other environmental studies required by law, subsequent to exploring or developing of any area or region of the Coastal Plain, the Secretary shall conduct such additional studies to establish environmental information as he deems necessary. The remaining provisions of the section are self-explanatory.

Subsection 7407(a)

This subsection provides that the Secretary shall diligently enforce all regulations, lease terms, conditions, restrictions, prohibitions, and stipulations promulgated pursuant to this title.

Subsection 7407(b)

This subsection sets forth responsibilities of holders of a lease. The provisions of the section are self-explanatory.

Subsection 7407(c)

This subsection provides that the Secretary shall promulgate regulations to provide for on-site inspection of facilities. The provisions of the section are self-explanatory.

Section 7408

This section provides funding for environmental monitoring and enforcement. Beginning with the first fiscal year following the first lease sale and continuing annually for 10 years after oil and gas exploration, production and development activities on the Coastal Plain have ceased, Congress authorizes to be appropriated to the Administrator of the Environmental Protection Agency (Administrator) \$5,000,000. The Administrator shall distribute annually to the State of Alaska not less than 25 percent of such amount. These moneys shall be used for activities, or in support of activities, within the State of Alaska by the Environmental Protection Agency and the State of Alaska for monitoring compliance with, and enforcing, all Federal environmental laws within their jurisdiction applicable to oil and gas exploration, development and production under this Act, and monitoring compliance with, and enforcing, all such laws, with respect to owners, operators, and other persons having business in connection with leases granted pursuant to this Act. The Administrator is also directed to consult with the State of Alaska and the Secretary of Transportation with respect to the proper allocation of responsibilities between the State and the Secretary for environmental statutes under the jurisdiction of the Department of Transportation (DOT). The agreement between the Administrator and the State is to reflect the agreement of the DOT and the State and will provide funding for the State of Alaska to assume its responsibilities.

SUBTITLE E—LAND RECLAMATION AND RECLAMATION LIABILITY FUND

Section 7501

This section provides that the holder of a lease or leases on lands within the Coastal Plain shall be fully responsible and liable for the reclamation of lands within the Coastal Plain and any other Federal lands adversely affected in connection with exploration, development, or transportation activities on a lease within the Coastal Plain. The holder of a lease shall also be responsible for conducting any land reclamation required as a result of activities conducted on the lease by any of the lease holder's subcontractors or agents. The holder of a lease may not delegate or convey, by contract or otherwise, this responsibility and liability to another party without the express written approval of the Secretary.

Section 7502

This section provides that the standard to govern the reclamation of lands required to be reclaimed under the title, following their temporary disturbance or upon the conclusion of their use or prolonged commercial production of oil and gas and related activities, shall be reclamation and restoration to a condition capable of supporting the uses which the lands were capable of supporting prior to any exploration, development, or production, or upon application by the lessee, to a higher or better use as approved by the Secretary; except that in the case of the roads, drill pads and other gravel-foundation structures, reclamation and restoration shall be to a condition as closely approximating the original condition of such lands as is feasible using the best commercially-available technology. Reclamation of lands shall be conducted in a manner that will not itself impair or cause significant adverse effects on fish or wildlife, their habitat, or the environment.

Subsection 7503(a)

This subsection directs that within six months of a commercial discovery within the Coastal Plain, the Coastal Plain Liability and Reclamation Fund (the Reclamation Fund) be established by the Secretary.

Subsection 7503(b)

This subsection provides that the Secretary shall collect from the operator a fee of five cents per barrel on any commercially-produced crude oil or natural gas liquids from the Coastal Plain at the time and point where such crude oil or natural gas liquids first leave the Coastal Plain. The collection of the fee shall cease when \$50,000,000 has been accumulated in the Reclamation Fund, and it shall be resumed at any time that the accumulation of revenue in the Reclamation Fund falls below \$45,000,000.

Subsection 7503(c)

This subsection provides that all revenues collected under subsection (b) shall be paid into the Reclamation Fund. The remaining provisions of the subsection are self-explanatory.

Subsection 7503(d)

This subsection provides that the revenues in the Reclamation Fund shall be available, to the extent provided in annual appropriations acts and with the approval of the Secretary, for certain designated purposes. For purposes of paragraph 7503(d)(3), North Slope lands are lands in Alaska north of 68 degrees north latitude and east of the western boundary of the National Petroleum Reserve—Alaska.

Subsection 7503(e)

This subsection provides that the United States shall have legal recourse against any party or entity who is responsible for the reclamation of any area within the Coastal Plain, to recover certain funds expended due to a failure by the responsible party to reclaim such area as required by this Act: *Provided*, That such right of recovery shall not be available against any Alaska Natives conducting traditional subsistence use activities. Any funds so recovered shall be deposited in the Reclamation Fund.

Subsection 7503(f)

This subsection provides that any moneys remaining in the Reclamation Fund 50 years after the period of active oil and gas exploration, development, production and reclamation has been concluded in the Coastal Plain shall be paid into the general fund of the United States Treasury.

SUBTITLE F—DISPOSITION OF OIL AND GAS REVENUES

Section 7601

This section provides that notwithstanding any other provision of law, all revenues received from competitive bids, sales, bonuses, royalties, rents, fees (other than those collected under section 7307(d)(2)(A) and section 7503 (b)), interest charges or other income derived from the leasing of oil and gas resources within the Arctic National Wildlife Refuge, Alaska shall be distributed as follows: (a) fifty per centum to the State of Alaska; and (b) fifty per centum to the United States.

The Committee is aware that the State of Alaska contends that the Alaska Statehood Act guarantees that the State will receive 90 percent of any mineral revenues from ANWR unless the State agrees to accept a different percentage.

The Committee strongly disagrees with the State's contention.

The Committee carefully considered the State's contention and determined that the Alaska Statehood Act in no way restricts Congress to the distribution scheme set out in the Mineral Leasing Act when it enacts legislation to provide for distribution of revenues from new mineral leases. We agree with the conclusion of the Solicitor of the Department of the Interior that:

Congress has the authority under the Property Clause of the Constitution to alter the distribution formula set out in the Mineral Leasing Act for oil and gas revenues from the Arctic National Wildlife Refuge. The State of Alaska has not met the heavy burden of persuasion with respect

to the argument that those Property Clause powers were terminated by the section in the Statehood Act amending the MLA to include Alaska in the Act's revenue distribution formula. We can find no support in the Alaska Statehood Act for the proposition that the MLA was incorporated into the compact between the Federal Government and the State. In fact, opposite the proposition, we find other instances in which Congress has amended the MLA in a manner which adversely affected the State's interests.

The Solicitor's Opinion is printed in the Appendix of this Report. Also printed in the Appendix is an opinion from the Department of Justice concurring in the conclusions reached by the Solicitor in this matter.

Subsection 7602(a)

This subsection provides that revenues distributed to the United States pursuant to subsection 7601(b) are to be deposited into a special account in the Treasury known as the Energy Security Fund (the Fund). Revenues deposited in the Energy Security Fund may be expended solely for the purposes and in the manner provided for in this subsection. The remaining provisions of the subsection are self-explanatory.

Subsection 7602(b)

This subsection provides that not later than 30 days after the date of enactment of this title, the Secretary of Energy shall initiate a process to identify and prepare a list, in descending order or priority, of energy-related projects or programs to enhance the nation's energy security and reduce dependence on imported oil. The Secretary shall consult with such governmental and nongovernmental entities in preparing the list as the Secretary deems necessary. The initial list shall be submitted to Congress as part of the President's first budget submitted after the initial deposit of funds in the Energy Security Fund. The list shall be revised annually and transmitted in accordance with paragraph 2.

Subsection 7602(c)

This subsection sets forth projects and programs that the list shall include.

Section 7602(d)

This section sets forth considerations for including projects or programs on the list.

Section 7602(e)

This section is self-explanatory.

Section 7602(f)

This section authorizes the appropriation of funds from the Energy Security Fund to carry out projects identified on the list.

Subsection 7603(a)

This subsection provides for funding for high priority arctic research projects and programs by authorizing \$20 million annually for five years from the Energy Security Fund. The remaining provisions of the subsection are self-explanatory.

Subsection 7603(b)

This subsection sets forth the procedures for preparing and transmitting to Congress a list of arctic research projects and programs which will be eligible for funding under the subsection.

SUBTITLE G—EXPORT RESTRICTIONS

Subsection 7701(a)

This subsection provides that notwithstanding any other provision of law, no crude oil, with certain specified exceptions, produced from lands in the Coastal Plain may be exported from the United States, or any of its territories and possessions, subject to subsection (b).

Subsection 7701(b)

This subsection provides that crude oil subject to the prohibition contained in subsection (a) may be exported only if the President so recommends to the Congress after making and publishing certain specified express findings, and the Congress, within 60 days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

Subsection 7701(c)

This subsection provides that notwithstanding any other provision of this section or any other provision of law, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such Nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

SUBTITLE H—OUTER CONTINENTAL SHELF LEASING MORATORIA

Section 7801

This section prohibits preleasing or leasing activity under the Outer Continental Shelf Lands Act with respect to the area seaward from the States of California and New Jersey until after January 1, 2000.

The Committee intends this provision to place a moratorium on OCS preleasing and leasing activities offshore California and New Jersey until the year 2000. This includes but is not limited to: calls for information; tract selection; preparation of the draft EIS and final EIS; notice of sale; receipt of bids; and award of leases. Nothing in this provision shall affect activities with respect to existing leases.

The Committee understands that the Department of the Interior has interpreted such moratoria provisions not to preclude the Sec-

retary from undertaking studies, other than those in support of specific sales, including ecological and socioeconomic studies, physical oceanographic studies, endangered and threatened species and marine mammal surveys, and other environmental and geologic studies, including fieldwork and correlation of existing data and information, sufficient to obtain information about all significant conditions, processes, resources, and environments that may influence or be influenced by activities on the OCS.

Title VIII—Advanced Nuclear Reactor Commercialization

Section 8101

This section contains the short title of this title.

Section 8102

This section contains the findings, purposes, and definitions for this title. The definitions establish a clear distinction between the two categories of advanced nuclear reactors: the so-called near-term technologies that will not require a technology demonstration, such as advanced light water reactors, for which a program is set forth in section 8104; and the more advanced technologies that will require a prototype demonstration, such as high-temperature gas-cooled reactors and liquid metal reactors, for which a program is set forth in section 8105.

Section 8103

This section contains program goals for the Department of Energy's civilian nuclear reactor research and development. This section directs the Secretary of Energy (the Secretary) to carry out an advanced nuclear reactor research, development, and demonstration program that will lead to commercialization of advanced reactor technologies after 1995. The Secretary is required to prepare and submit to Congress a five-year program plan for commercialization of these advanced technologies.

This section establishes a 1995 goal for completion of research and development and certification of standardized designs for the near-term technologies that will not require a technology demonstration. This section also establishes a 1995 goal for completion of necessary research and development for the more advanced technologies to support selection of one or more of these technologies for prototype demonstration after 1995.

Section 8104

This section relates to the commercialization of near-term technologies, primarily advanced light water reactors, that will not require a technology demonstration. This section directs the Secretary to conduct a program of technical and financial assistance to encourage and support development and certification of advanced reactor designs. The Secretary is authorized under this section to enter into cooperative agreements with private parties and to support through cost-shared agreements the engineering and research and development necessary to achieve certification of advanced light water reactor designs.

This section requires the Secretary and the Nuclear Regulatory Commission each to submit to Congress an annual report on progress in achieving certification of advanced reactor designs.

Section 8105

This section relates to the prototype demonstration of the more advanced technologies, such as high-temperature gas-cooled reactors and liquid metal reactors. This section requires the Secretary to make a recommendation to Congress no later than January 31, 1996 on whether to build one or more full-scale prototype demonstration reactors utilizing one or more of the advanced technologies. This section specifies that any recommendation to build a prototype demonstration shall specify a preferred technology or technologies and include detailed information on schedule milestones, funding requirements, and private sector support. Any prototype demonstration proposed to be built using the authority under this section would be cost-shared with the private sector with no less than 50 percent of the total cost provided by non-Federal sources. The Secretary is authorized under this section to solicit proposals to build a prototype demonstration any time after 180 days after submission of the Secretary's recommendation to Congress. The authority to solicit proposals after this 180-day waiting period is subject to the availability of appropriations for this purpose.

Section 8106

This section provides the authorization of appropriations for the carrying out the purposes of this title.

Title IX—Nuclear Reactor Licensing

In General

Title IX supplements the Nuclear Regulatory Commission's (NRC) rule governing the issuance of early site permits, standard design certifications, and combined licenses for nuclear power plants. This rule, codified at 10 C.F.R. Part 52 and referred to as "Part 52," sets forth the requirements necessary for the issuance of the new permits, certifications, and combined licenses. The NRC adopted Part 52 in April 1989 under the Commission's existing statutory authority in the Atomic Energy Act of 1954 (42 U.S.C. 2011-2286i).

Following its adoption, Part 52 was reviewed in the United States Court of Appeals for the District of Columbia Circuit. A three-judge panel of that court ruled that the NRC had exceeded its statutory authority when it adopted two provisions of Part 52. The first of these limited the opportunity for a hearing under section 189a. of the Atomic Energy Act of 1954 to issues of conformity with the combined license. The other provided that the NRC could infer from a finding that a plant was built in conformity with its combined license that it therefore complied with the Atomic Energy Act. *Nuclear Information and Resource Service v. NRC*, 918 F.2d 189 (D.C. Cir. 1990). The court did not say that the provisions were unwarranted; it said that the responsibility for adopting them "lies not with the Commission, but with the Congress." On March

27, 1991, the full United States Court of Appeals for the District of Columbia Circuit vacated the decision of the three-judge panel, thereby restoring the legal effect of Part 52, pending a rehearing of the case in November 1991.

Title IX clarifies the statutory basis for Part 52. In doing so, the Committee does not intend to imply that the Atomic Energy Act of 1954 does not now provide sufficient statutory authority for Part 52.

Section 9101

This section designates Title IX the "Nuclear Reactor Licensing Act of 1991."

Section 9102

This section redesignates section 185 of the existing Atomic Energy Act as subsection a. and adds a new subsection b. Subsection a. will continue to govern the issuance of construction permits and operating licenses following completion of plants initially granted a construction permit under the old "two-step" licensing process. The new subsection b. will govern the issuance of a combined construction and operating license and the commencement of operation of a plant under a combined license.

The Committee believes that the NRC has adequate statutory authority to issue combined construction and operating licenses under section 161h. of the existing Atomic Energy Act. Section 161h. authorizes the Commission to "consider in a single application one or more of the activities for which a license is required by this Act, [and] combine in a single license one or more of such activities. * * *" 42 U.S.C. 2201(h). The new subsection b. reaffirms the NRC's existing authority and sets out specific requirements governing the issuance of a combined license.

The first sentence of subsection b. requires the NRC to hold a hearing under section 189a.(1)(A) of the Atomic Energy Act (as redesignated by Title IX) prior to issuing a combined license. The Committee contemplates that a hearing on a combined license application would be governed by the same rules relating to admission of parties, scope of issues considered, thresholds for contentions, and procedural rights as hearings on construction permit and operating license applications under the existing section 189a.(1). Subsection b. places no independent restrictions on hearings on applications for a combined license.

The first sentence of subsection b. also provides the standard by which the NRC must measure any application for a combined license, namely:

[whether] there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of [the Atomic Energy] Act, and the Commission's rules and regulations.

This standard is essentially the same standard set forth in section 52.97(a) of the NRC's rule. The phrase "reasonable assurance" is intended to have the meaning established by the Supreme Court in *Power Reactor Development Co. v. International Union of Electrical, Radio & Machine Workers*, 367 U.S. 396 (1961) and by Atomic

Energy Commission and NRC practice over the last 30 years. The remaining part of the standard is drawn from the penultimate sentence of the existing section 185.

The second and third sentences of subsection b. require the NRC to:

(1) Set forth in the combined license the inspections, tests, analyses, and acceptance criteria that will be used to determine whether the plant has been built and will operate in conformance with the combined license;

(2) Ensure that the prescribed inspections, tests, and analyses are performed; and

(3) Ascertain that the prescribed acceptance criteria are met before the plant begins operating.

These three provisions are similar to the first sentence of section 52.97(b), section 52.99, and section 52.103(c) of the NRC's rule, respectively.

These provisions lie at the heart of Part 52. As Marcus A. Rowden, a former chairman of the NRC, testified before the Committee:

Part 52 contrasts sharply with the so-called "design-as-you-go" process that characterized reactor licensing over the past three decades. Under that process, the Commission, on the basis of only limited design information, would decide whether to issue a construction permit; and, some years thereafter, it would conduct a full review of the final design of the constructed plant and decide whether to grant an operating license. Such a process, with its lack of pre-construction finality and enormous costs associated with resolving design issues after construction was complete, stood as an obstacle to the development and use of preapproved standardized designs. Another grave deficiency was that public hearings on a nuclear plant took place either too early or too late—prior to construction when only limited design information was available, or after a plant had been fully constructed and billions of dollars had been expended.

The Committee believes that requiring resolution of all important safety issues and establishing the licensing criteria against which the plant will be judged in the combined license before construction begins will have several major benefits. First, it will enhance public participation by airing all safety issues first, before the license is issued and the plant is built—before, in the words of Justice William O. Douglas, "millions have been invested, [and] the momentum is on the side of the applicant, not on the side of the public." *Power Reactor Development Co. v. International Union of Electrical, Radio & Machine Workers*, 367 U.S. 396, 417 (1961)(Douglas, J., dissenting). Second, it will enhance certainty for the utility building the plant by spelling out before construction begins what conditions the completed plant must satisfy in order to operate. No longer will the rules be made up after the game is played. Finally, it will provide the NRC regulators objective safety standards with which to measure the constructed plant in deciding whether the plant is safe to operate.

The third sentence of section 9102 requires the NRC to determine that the prescribed inspections, tests, and analyses are per-

formed and that the acceptance criteria have been met before the plant can begin operating. This contrasts with the steps necessary under the existing section 185 before a completed plant can receive an operating license. Under the "two-step" licensing process of the old section 185, before the plant could operate it was necessary for the NRC to find that the plant had been constructed and would operate in conformity not only with the license application, but also with the Atomic Energy Act and the NRC's rules. This clearly was necessary under the two-step process since many safety issues were unresolved when the construction permit was granted and remained unresolved until the plant was built and ready to begin operating. Only then would the NRC consider whether the plant complied with the Atomic Energy Act or the NRC's rules.

That is no longer the case under Part 52. Part 52 requires the NRC to determine that the plant will be constructed and operated in conformity with its combined license, the Atomic Energy Act, and the NRC's rules before the combined license is issued and construction begins. In addition, Part 52 requires the NRC to establish and set out in the combined license the inspections, tests, analyses, and acceptance criteria to be used to verify compliance with the combined license during the construction process and before operation commences. Accordingly, the Committee believes that, in these circumstances, the Commission reasonably can determine that conformity with the license acceptance criteria establishes conformity with the Atomic Energy Act and the NRC's rules.

In the event that significant new information comes to light after the issuance of a combined license that establishes that the plant will not comply with the Atomic Energy Act or the NRC's rules—even if all of the acceptance criteria in the combined license are met—the NRC would have the power and responsibility to block operation of the plant until any noncompliance has been corrected. The NRC retains all of its existing authority under sections 186 and 187 of the Atomic Energy Act to modify, suspend, and revoke any license in order to protect the public health and safety. In addition, the Committee notes that Part 52 contains several mechanisms (e.g., 10 C.F.R. 52.39, 52.68, 52.97, and 52.103) to amend the acceptance criteria on the basis of new evidence.

The opportunity for a public hearing on questions of whether the plant complies with the combined license would be preserved and governed by the provisions of a new section 189a.(1)(B), which is added to the Atomic Energy Act by section 9103 of Title IX. The NRC would not be required, but would have the discretion, to hold a hearing to satisfy itself that the acceptance criteria in the combined license have been met.

Section 9103

This section redesignates section 189a.(1) of the Atomic Energy Act as subparagraph (A) of section 189a.(1) and adds a new subparagraph (B). The redesignated subparagraph (A) will continue to govern hearings in construction permit and operating license proceedings, as well as hearings on applications for combined construction and operating licenses. The new subparagraph (B) governs all post-construction hearings on issues of conformance with a combined license.

Clause (i) of the new subparagraph (B) requires the NRC to give public notice 180 days before a plant begins operating under a combined license and gives "any person whose interest may be affected" (the same standard as in subparagraph (A)) 60 days to request a hearing on whether the acceptance criteria have been met. Clause (i) is similar to as section 52.103(a) and (b)(1) of the NRC's rule.

Clause (B)(ii) requires, for a hearing request to be granted, that the request make a *prima facie* showing that one or more of the acceptance criteria have not been or will not be met and that, as a result of the nonconformance, the health and safety of the public could be compromised. Thus, the types of issues warranting a hearing under subparagraph (B) would be similar to those under section 52.103(b)(1)(i) of the NRC's rule.

According to the NRC:

As a matter of logic, every conceivable contention which could be raised at [the post-construction] stage would necessarily take one of two general forms. It would allege either that construction had not been completed—and the plant would not operate—in conformity with the terms of the combined license, or that those terms were themselves not in conformity with the Atomic Energy Act and pertinent Commission requirements.

54 Fed. Reg. 15372, 15381 (Apr. 18, 1989).

Part 52 establishes a two-track system for addressing these two types of issues. With respect to issues of compliance with the license criteria, "Part 52 provides, with certain reasonable limitations, a hearing upon request" under existing section 189a.(1). 918 F.2d at 194. Issues of whether the terms of the combined license itself is in conformity with the Atomic Energy Act or the NRC's rules are treated as petitions to modify the terms and conditions of the combined license. Part 52 further provides that these petitions will be processed in accord with section 2.206 of the NRC's rules, which sets forth the process by which members of the public can petition the NRC to modify, suspend, or revoke NRC licenses.

The Committee endorses the approach adopted by the NRC in Part 52. Clause (ii) codifies the opportunity for a hearing on license conformity issues. Although section 9103 does not expressly provide a procedure for addressing other issues, the Committee intends the NRC to treat them as petitions to modify the terms and conditions of the combined license, as contemplated by section 52.103(b) of the NRC rule. Section 9103 gives explicit statutory authority for the NRC to use the procedures for which the three-judge panel in the *NIRS v. NRC* case found insufficient statutory authority in the existing Atomic Energy Act. Although the panel's decision has been vacated by the full United States Court of Appeals for the District of Columbia Circuit, the Committee intends to remove any doubt that the NRC has statutory authority for this procedural system.

Clause (B)(iii) authorizes the NRC to allow a plant to begin operating under its combined license even though a hearing is still pending under subparagraph (B) unless: (1) the Commission decides that the hearing petitioners are likely to succeed on the merits of their case; and (2) the Commission does not have reasonable assur-

ance that the public health and safety would be adequately protected in the event the plant were allowed to operate. The purpose of this provision is to prevent the pendency of a hearing from needlessly delaying operation of a plant if the NRC reasonably determines the plant can operate in the interim without endangering the public health and safety.

Clause (B)(iv) provides that hearings held under subparagraph (B) shall use informal procedures except to the extent the NRC determines that certain adjudicatory procedures are necessary to resolve substantial disputes of material fact. The NRC has long used formal adjudicatory procedures in nuclear power plant licensing hearings under section 189a, even though the Atomic Energy Act does not expressly require them.

Nearly thirty years ago, while considering the legislation that created the Atomic Safety and Licensing Board that conducts nuclear power plant licensing proceedings, the Joint Committee on Atomic Energy considered amending the Atomic Energy Act to provide that the NRC's predecessor, the Atomic Energy Committee (AEC) could—indeed, should—use informal hearing procedures in nuclear licensing proceedings. The Joint Committee ultimately concluded that the Commission already had adequate authority to use informal procedures. The Joint Committee's report on the Licensing Board bill makes this clear:

Members of the Special Committee on Atomic Energy Law of the American Bar Association, concerned over the trend toward judicialization in the AEC administrative process, * * * recommended that th[e] legislation be amended to specifically authorize the Commission to use methods in addition to trial-type proceedings for the development of scientific and technical information affecting safety.

The AEC * * * contended that the type of hearing procedures followed by the Commission is required to carry out the intent of the 1957 amendments to the Atomic Energy Act and their legislative history as well as the Administrative Procedure Act.

To the extent that the legislative history of the 1957 amendments may not be clear, it is expressly stated here that the [Joint] [C]ommittee encourages the Commission to use informal procedures to the maximum extent permitted by the Administrative Procedure Act.

In this connection, the [Joint] [C]ommittee refers to the recent report by the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee (S.Rept. 1480, May 9, 1962):

By now, it has become apparent that the adversary type of proceeding, resembling as it does the processes of the courts, does not lend itself to the proper, efficient, or speedy determination of issues with which the administrative agencies frequently must deal. * * * Questions relating to the * * * licensing of atomic reactors * * * might better be solved in some type of proceeding other than an administrative "lawsuit" among numerous parties. * * *

Having pointed out the desirability of informal procedures, and the legal latitude afforded the Commission to follow such procedures, the [Joint] [C]ommittee does not believe it necessary to incorporate specific language in the legislation requiring informal procedures. (1962 U.S. Cong. & Admin. News at 2212-2213.)

Despite this clear statement of Congressional intent, some courts still consider the NRC's authority to use informal hearing procedures in nuclear licensing hearings to be an "open question." See, e.g., *Union of Concerned Scientists v. NRC*, 920 F.2d 50, n.3 (D.C. Cir. 1990). Accordingly, clause (iv) provides express authority for the NRC to use informal procedures in hearings under subparagraph (B). The Committee notes that this authority is comparable to that already exercised by the NRC in "materials" licensing proceedings. The NRC's authority to use informal procedures in materials licensing cases has been upheld by the courts. *City of West Chicago v. NRC*, 701 F.2d 632 (7th Cir. 1983).

Clause (B)(v) directs the NRC, to the extent practicable, to render a final decision on hearing issues within 120 days of the public notice required under clause (i). In addition, clause (v) provides that commencement of operation under a combined license is not subject to subparagraph (A). This latter provision simply makes it clear that any hearing held on issues of whether a plant complies with the acceptance criteria in its combined license is to be governed by the provisions of subparagraph (B) rather than subparagraph (A).

Section 9104

This section requires the NRC to propose rules implementing Title IX within one year of its enactment.

Section 9105

This section amends section 189a.(2) of the Atomic Energy Act (the so-called "Sholly Amendment"). Congress added subsection (2) to the Atomic Energy Act in 1982 to permit the NRC to issue and make immediately effective an amendment to an operating license if the NRC determined that the amendment "involves no significant hazards consideration" even though a request for a hearing on the amendment may still be pending. As defined by the NRC's rules, an amendment is said to "involve no significant hazards consideration" if operation of the plant in accordance with the amendment would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

10 C.F.R. 50.92(c).

As presently written, the existing section 189a.(2) refers only to amendments to operating licenses, not to combined licenses. Accordingly, section 52.97(b) of the NRC's rule now provides that any hearing on a proposed amendment to a combined license must be completed before the plant can operate. Section 9105 would permit

the NRC to treat amendments to combined licenses the same way it treats amendments to operating licenses under section 189a.(2). Thus, the NRC could allow the plant to operate under the combined license as amended prior to completion of the hearing so long as the amendment "involves no significant hazards consideration."

Section 9106

This section amends the table of contents of the Atomic Energy Act to reflect the changes to section 185 of that Act effected by section 9102.

Section 9107

This section provides that the provisions of Title IX apply to proceedings with respect to which an application for a combined construction and operating license was filed after May 8, 1991. The Committee is aware of no such pending proceedings or applications. By its terms, Title IX does not affect proceedings involving construction permits or operating licenses currently pending before the NRC.

The Committee does not intend Title IX to limit judicial review of NRC licensing decisions in cases involving combined licenses. Title IX does not affect section 189b. of the Atomic Energy Act, which provides:

Any final order entered in any proceeding of the kind specified in subsection a. above shall be subject to judicial review in the manner prescribed in * * * [28 U.S.C. 2342], and to the provisions of section 10 of the Administrative Procedure Act, as amended.

The Hobbs Act, 28 U.S.C. 2342, referred to in section 189b., provides:

The court of appeals has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

* •* * * *

(4) all final orders of the [Nuclear Regulatory] Commission made reviewable by section 2239 of title 42 [i.e., section 189b. of the Atomic Energy Act]. * * *

Section 10 of the Administrative Procedure Act, also referred to in section 189b., provides in relevant part:

[E]xcept to the extent that * * * agency action is committed to agency discretion by law [5 U.S.C. 701(a)(2)] * * * [a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. [5 U.S.C. 702.]

Section 189b. applies to final orders or failures to act in post-construction proceedings involving a combined license under section 189a.(1)(B) with the same force as in pre-construction proceedings for the granting of any combined construction and operating license under section 189a.(1)(A). As the Supreme Court held in *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 737 (1985), section

189b. "provide[s] for initial court of appeals review of all final orders in licensing proceedings whether or not a hearing before the Commission occurred or could have occurred."

While the courts of appeals indisputably have subject matter jurisdiction to review all final orders in NRC licensing proceedings, whether the courts will elect to exercise this jurisdiction is less clear. In 1985, the Supreme Court ruled in *Heckler v. Chaney*, 470 U.S. 820, that an agency's decision not to take enforcement action is presumed immune from judicial review as an "agency action * * * committed to agency discretion by law" under section 5 U.S.C. 701(a)(2). Citing *Heckler v. Chaney*, a number of courts of appeals have ruled that the NRC's refusal to take enforcement actions pursuant to citizen petitions to modify, suspend, or revoke NRC licenses under section 2.206 of the NRC's rules are presumptively unreviewable. See, e.g., *Massachusetts Public Interest Research Group v. NRC*, 852 F.2d 9 (1st Cir. 1988); *Safe Energy Coalition of Michigan v. NRC*, 866 F.2d 1473 (D.C. Cir. 1989); *Arnow v. NRC*, 868 F.2d 223 (7th Cir. 1989). Because under Part 52—and Title IX—the Commission would consider petitions to modify combined licenses based upon significant new information in accordance with the procedures of section 2.206, concern has been expressed that the courts may hold NRC action on these petitions unreviewable as well.

The Committee recognizes that the Supreme Court left open the question whether section 2.206 denials are presumptively unreviewable when it affirmed the jurisdiction of the court of appeals over such denials. 470 U.S. at 735, n.8. Moreover, the Committee recognizes that this question is one of the principal issues pending before the United States Court of Appeals for the District of Columbia Circuit in rehearing the *NIRS* case.

Nonetheless, the Committee believes that any final NRC action on a petition to modify a combined license should be judicially reviewable. The NRC has taken this position both in its petition for rehearing the *NIRS v. NRC* case and in a brief filed in a licensing proceeding before the Fifth Circuit, *Citizens Concerned About Nuclear Power, Inc. v. NRC*. In both cases, the NRC distinguished between use of the section 2.206 procedures in an enforcement action, which the courts have found unreviewable under *Heckler v. Chaney*, and the use of these procedures in a licensing proceeding. Thus, as the NRC stated in its petition for rehearing in the *NIRS* case:

The type of 2.206 petition authorized by Part 52 is not an "enforcement action" but part of the decision whether to authorize the plant to operate. Thus, the *Heckler v. Chaney* rationale does not apply, and parties may seek judicial review of NRC decisions to authorize plant operation notwithstanding new evidence.

Moreover, as Justice Brennan noted in his concurring opinion in *Heckler v. Chaney*:

The Court properly does not decide today that nonenforcement decisions are unreviewable in cases where (1) an agency flatly claims that it has no statutory jurisdiction to

reach certain conduct * * *; (2) an agency engages in a pattern of nonenforcement of clear statutory language * * *; [or] (3) an agency has refused to enforce a regulation lawfully promulgated and still in effect. * * *

470 U.S. at 821 (citations omitted). Lower court decisions holding NRC denials of 2.206 petitions to be presumptively unreviewable have consistently recognized the authority of the courts to overturn an NRC denial in these circumstances.

In sum, the Committee believes that the courts of appeals have authority to review NRC denials of petitions to modify combined licenses under Part 52 even though the NRC chooses to consider these petitions under the procedures of section 2.206 of its rules. While the NRC is entitled to deference on complex, technical issues of nuclear engineering and radiological health and safety, the courts of appeals have both the authority and the responsibility to see that the NRC has fairly and reasonably discharged its statutory responsibilities. Accordingly, the Committee states its intent that final orders in, or denials of, petitions to modify combined licenses issued will be subject to judicial review to the same extent as final orders or failures to act in proceedings under section 189a.(1)(A) and (B).

Title X—Uranium

SUBTITLE A—URANIUM ENRICHMENT

Section 10101

This section provides that Subtitle A of Title X may be cited as the "Uranium Enrichment Act of 1991."

Section 10102

This section strikes subsection 161v. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(v)), which contains pricing requirements for the Department of Energy's (DOE) enrichment business.

Section 10103

This section redesignates the Atomic Energy Act of 1954 (AEA) as Title I of that Act and adds a new Title II pertaining to the United States Enrichment Corporation (USEC). Section 10103 adds sections 1101 through 1703 to the AEA, as discussed below.

New AEA section 1101 sets forth congressional findings on the uranium enrichment program. In the judgment of the Committee, changes in the international market for enriched uranium necessitate a restructuring of the Federal uranium enrichment enterprise as provided by the new AEA Title II. It is essential to the national interest of the United States that the enterprise now adopt stable, predictable fiscal and management policies and practices that will enable it to compete in the international market, while continuing to meet the paramount objective of ensuring the nation's common defense and security.

New AEA section 1201 defines terms used in AEA Title II.

New AEA section 1202 establishes the USEC as a wholly-owned government corporation subject to the Government Corporation Control Act (31 U.S.C. 9101-9109) and as an agency and instrumen-

tality of the United States. Subjecting the USEC to the Government Corporation Control Act imposes on the USEC certain requirements relating to budgets, audits, accounts, and financial obligations set forth in that Act. Defining the USEC as an agency and instrumentality of the United States subjects the Corporation, except as otherwise provided, to laws governing Federal agencies.

New AEA section 1203 defines the mission of the USEC by setting forth the purposes for which it is created.

Subsection 1203a. states that the USEC is to acquire the enterprise's materials and facilities from DOE.

Subsection 1203b. states that the USEC is to operate the enterprise's enrichment facilities and, as business conditions warrant, to expand or construct new ones.

Subsection 1203c. states that the USEC is to market and sell uranium and enrichment services to DOE and domestic and foreign persons.

Subsection 1203d. states that the USEC is to conduct research and development in furtherance of the enterprise.

Subsection 1203e. states that the USEC is to operate the enterprise like a for-profit, private-sector business and to "maximize the long-term economic value" of the corporation. The latter phrase makes it clear that the USEC is not to seek short-term profits at the expense of the corporation's long-term viability.

The maintenance of some domestic enrichment capability is essential for purposes of maintaining energy security. The Committee thus expressly rejects the so-called "harvest" scenarios in which the enrichment enterprise would be milked for short-term profits at the expense of long-term economic viability.

Subsection 1203f. states that the USEC is to operate as a self-financing corporation, without Federal appropriations or financing.

Subsection 1203g. states that the USEC is to maintain a reliable and economical domestic source of enrichment services.

Subsection 1203h. states that activities of the USEC are not to endanger the public health and safety.

Subsection 1203i. states that the USEC is to further the Nation's common defense and security by producing nuclear fuel for the United States Navy and helping to achieve United States nuclear nonproliferation goals.

Subsection 1203j. states that the USEC is to take other lawful actions in furtherance of the foregoing purposes.

New AEA section 1301 requires the USEC to maintain an office in the District of Columbia for legal purposes but permits it to establish additional offices elsewhere.

New AEA section 1401 sets forth specific powers and duties of the USEC.

Subsection 1401a. preserves contracts for the operation and management of the enrichment plants in existence on the date of enactment, substituting the USEC for DOE as a party to those contracts.

Subsection 1401b. authorizes the USEC to conduct such research and development activities on uranium separation as it deems necessary for business purposes. Although the specific research and development that must be accomplished is left to the judgment of the Corporation, the Committee intends that it be sufficient to maintain the long-term competitiveness of the Corporation.

Subsection 1401c. permits the USEC to receive uranium only from, and to deliver uranium only to, persons who hold the necessary licenses from the Nuclear Regulatory Commission (NRC) under the AEA.

Subsection 1401d. permits the USEC to enter into enrichment service contracts only with customers who hold the necessary licenses from the NRC under the AEA.

Subsection 1401e. permits the USEC to provide uranium or enrichment services to DOE for military applications under 42 U.S.C. 2121 or for other DOE programs notwithstanding the prohibition in 42 U.S.C. 2077(e) against making uranium available for military applications and notwithstanding Federal procurement restrictions in 31 U.S.C. 1535.

Subsection 1401f. authorizes the USEC to grant licenses for the use of its patent rights and to collect rents or royalties for the use of its property.

New AEA section 1402 sets forth general corporate powers of the USEC.

Subsection 1402a. provides that the USEC will continue until dissolved by law.

Subsection 1402b. authorizes the USEC to use a corporate seal.

Subsection 1402c. permits the USEC to be represented by its own attorneys (rather than the Attorney General under 28 U.S.C. 519) in judicial and administrative proceedings.

Subsection 1402d. permits the USEC to indemnify its officers and employees against liabilities incurred in the course of their official duties.

Subsection 1402e. permits the USEC to adopt corporate bylaws.

Subsection 1402f.(1) permits the USEC to own or dispose of real and personal property without regard to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 note), which would otherwise apply to procurement and property disposal.

Subsection 1402f.(2) prescribes advertising requirements for USEC contracts (instead of the advertising requirements in the Federal Property and Administrative Services Act of 1949, 41 U.S.C. 252).

Subsection 1402g. permits the USEC to use the personnel of other Federal agencies, personnel of State or local governments, or uncompensated volunteers (without regard to the prohibition on the use of voluntary services in 31 U.S.C. 1342).

Subsection 1402h. permits the USEC to conduct business transactions with other Federal agencies, State and local governments, and private-sector entities.

Subsection 1402i. authorizes the USEC to manage its financial transactions subject to the Government Corporation Control Act and other applicable law.

Subsection 1402j. exempts the USEC from apportionment of appropriations under 31 U.S.C. 1511-1519.

Subsection 1402k. authorizes the USEC to settle legal claims.

Subsection 1402l. authorizes the USEC to exercise the Federal Government's power of eminent domain so that it may acquire property in furtherance of its business.

Subsection 1402m. gives the USEC the same priority as other Federal agencies for purposes of collecting debts from bankrupt, insolvent, or deceased debtors.

Subsection 1402n. permits the USEC to withhold from disclosure under the Freedom of Information Act information it deems "Government Commercial Information."

Subsection 1402o. authorizes the USEC to call upon the General Services Administration (GSA) to perform the same services GSA furnishes other Federal agencies.

Subsection 1402p. permits the USEC to accept gifts and donations.

Subsection 1402q. authorizes the USEC to execute legal documents.

Subsection 1402r. provides that judgments or settlements of legal proceedings against the USEC are to be paid out of its own funds and not out of the Judgment Fund (31 U.S.C. 1304). Subsection r. also exempts tort claims against the USEC from the Federal Tort Claims Act, except in the case of claims arising out of a nuclear incident that occurred prior to the licensing of the Portsmouth or Paducah gaseous diffusion plants under section 1601. The Federal Tort Claims Act provides other Federal agencies with legal defenses to tort claims. (For example, the United States cannot be held liable for harm resulting from discretionary policy decisions; it can only be held liable for acts of negligence; it cannot be subjected to jury trials; and claimants must first seek compensation from the responsible agency before going to court.) By exempting the USEC from the protections of the Federal Tort Claims Act, the USEC will be treated like a private defendant rather than a Federal agency in legal proceedings for harm caused by the USEC to others.

New AEA section 1403 continues under the USEC DOE's contracts, policies, and position in pending lawsuits.

Subsection 1403a. provides that all contracts with DOE pertaining to the enrichment business that are entered into before enactment of AEA Title II continue in effect as if they were entered into by the USEC substituted for DOE. Specifically, the USEC is bound to honor the terms of the December 18, 1987 Settlement Agreement with the Tennessee Valley Authority (TVA), by which DOE agreed to pay TVA capacity charges for unused electricity under two prior power contracts. The Committee expects the Corporation to make payments under such settlement agreement in accordance with its terms, including the schedule for such payments, and otherwise to ensure that no term of the settlement agreement is breached.

Subsection 1403b. continues in effect all DOE rules and orders pertaining to the enrichment business until changed by the USEC (or a court or Congress).

Subsection 1403c. substitutes the USEC for DOE and continues in effect all pending judicial proceedings pertaining to the enrichment business.

New AEA section 1404 provides that any liabilities attributable to the operation of the enterprise prior to the date of enactment of AEA Title II will remain liabilities of the Federal Government. Notwithstanding section 1403c., DOE will remain the defendant in any action seeking to impose liability for such a claim and the

United States will continue to be represented by the Justice Department. The Committee is unaware of any actual liabilities that fall within this category.

New AEA section 1501 provides for an Administrator and sets out his powers and duties.

Subsection 1501a. vests the responsibility for managing the USEC in the Administrator. It also provides that the Administrator is to be appointed by the President, by and with the advice and consent of the Senate. Pending confirmation of an Administrator, subsection a. directs the President to appoint a Federal officer or employee to serve as Acting Administrator.

Subsection 1501b.(1) makes the Administrator the chief executive officer of the USEC and makes him or her solely responsible for the management and direction of the USEC. It also authorizes the Administrator to appoint other officers and employees and define their duties.

Subsection 1501b.(2) fixes the Administrator's term of office at six years but allows for reappointment for additional six-year terms.

Subsection 1501b.(3) requires the Administrator to take an oath of office, consistent with 5 U.S.C. 3331.

Subsection 1501b.(4) provides that the Administrator shall be paid at the rate set by the President under section 1503d. or, in the absence of a Presidential determination, at Executive Level I (\$138,900 as of February 11, 1991).

Subsection 1501b.(5) requires the Administrator to be a citizen of the United States.

Subsection 1501b.(6) authorizes the Administrator to designate an officer of the USEC to act in his or her capacity in the event of absence or incapacity.

Subsection 1501b.(7) authorizes the President alone to remove the Administrator from office and only for neglect of duty or malfeasance in office. The President must give Congress thirty days prior notice of the reason for removing the Administrator before the removal becomes effective.

Subsection 1501c.(1) authorizes the Secretary of Energy to exercise general supervision over the Administrator in matters of (A) the common defense and security and (B) health, safety, and the environment.

Subsection 1501c.(2) gives the Administrator sole authority over fiscal matters, including the power to set the amount of dividends under section 1506c., notwithstanding the Government Corporations Control Act (31 U.S.C. 9104(a)(4)), which leaves to Congress the power to declare dividends. Other than the supervisory authority of the Secretary with respect to common defense and security and health, safety and the environment, the Committee does not intend that the Secretary, the Director of the Office of Management and Budget, or any other officer or employee of the Executive Branch exercise any authority over the Administrator, either directly or indirectly.

New AEA section 1502 authorizes the Administrator to delegate powers and duties to subordinate officers and employees.

New AEA subsection 1503 establishes a Corporate Board to oversee operation of the USEC. While the Committee is not willing to

vest the power of the USEC in a board of directors, it concludes that the performance of the Corporation should be reviewed regularly by a collegial body having expertise in management and disciplines relevant to the enrichment enterprise. This function will be exercised by the Corporate Board.

Subsection 1503a. provides that the Board is to be composed of five members, appointed by the President without Senate confirmation. The President is also to designate one of the five as the Chairman. Because a first-hand understanding of the needs of the Corporation's customers will be critical to its success, at least one member must concurrently be or previously have been a management employee of an electric utility.

Subsection 1503b.(1) directs the Corporate Board to review the USEC's policies and performance and advise the Administrator and the Secretary of Energy. In addition, the Committee believes that, when appropriate, the Secretary and the Administrator should be able to refer long-term policy matters and other issues to the Corporate Board for recommendation.

Subsection 1503b.(2) authorizes the Board to recommend the removal of the Administrator to the President. Any such recommendation must be transmitted to the President through the Secretary of Energy, who is to attach his own views on the recommendation.

Subsection 1503c. requires that members of the Board have access to all USEC documents.

Subsection 1503d. authorizes the Board to recommend to the Secretary of Energy the amount of compensation to be paid to the Administrator and any officer eligible to be paid in excess of Executive Level II (\$125,100 as of February 11, 1991) under section 1504b. The Secretary of Energy is to transmit the Board's recommendation to the President with his or her own recommendation. In the event the Board has two or more vacancies, the Secretary may make the recommendation alone. The President may set the compensation of the Administrator and the senior officers without regard to the recommendation of the Secretary or the Board.

Subsection 1503e. provides the following initial terms of office for members of the Corporate Board: The Chairman 5 years one member 4 years one member 3 years one member 2 years one member 1 year. Subsequent terms will be for five years. Members must be United States citizens and no more than three can belong to one political party.

Subsection 1503f. authorizes the President to fill vacancies for the remainder of the applicable term. Upon expiration of a term, the member may continue to serve for up to one year or until his or her successor assumes office, whichever occurs first.

Subsection 1503g. subjects members of the Board to conflict of interest laws and regulations (including 18 U.S.C. Chapter 11 and 5 U.S.C. Appendix—Executive Personnel Financial Disclosure Requirements). Because members of the Board are unlikely to perform Board duties on more than 130 days during any 365 consecutive days, they are expected to qualify as "special Government employees," as defined in 18 U.S.C. 202(a) for purposes of Federal conflict of interest laws. Subsection g. exempts the Board from the Federal Advisory Committee Act (5 U.S.C. Appendix 2). The Committee expects the President to take such action under 18 U.S.C.

208(b) as necessary to ensure that the provisions of 18 U.S.C. 208(a) do not apply to any members of the Corporate Board.

Subsection 1503h. prescribes meetings of the Board at the call of the chair but at least once every three months. The Administrator or his designee is to attend all Board meetings.

Subsection 1503i. provides compensation of Board members not otherwise paid as a Federal employee at a per diem rate equal to Executive Level III (\$115,300 as of February 11, 1991). All Board members are to be reimbursed for reasonable expenses incurred in the course of official duties.

Subsection 1503j.(1) requires the Board to report at least annually to the Administrator and to send copies to the President, the Secretary of Energy, and the Congress.

Subsection 1503j.(2) requires the Administrator to respond to the report within 90 days, stating his plans for implementing, or reasons for not implementing, the Board's recommendations.

New AEA section 1504 governs the hiring and compensation of officers and employees of the USEC.

Subsection 1504a. makes officers and employees of the USEC Federal employees. The effect of this provision is subject USEC employees to all civil service laws except as otherwise provided by Title III.

Subsection 1504b. authorizes the Administrator to appoint all USEC personnel, define their duties, and set their salaries in accordance with the Federal pay system. Upon recommendation by the Secretary of Energy and the Corporate Board and approval by the President, the Administrator may appoint up to ten officers to receive pay in excess of Executive Level II (\$125,100 as of February 11, 1991), but not more than eighty percent of the Administrator's salary. No other USEC employees may be paid in excess of Executive Level II.

The last sentence of subsection b. excepts USEC employees from the competitive service (as defined in 5 U.S.C. 2102). The next-to-the-last sentence, however, requires the USEC to follow merit system principles comparable to those of 5 U.S.C. 2301.

The Committee intends that all officers and employees of the Corporation be subject only to ultimate supervision by the Administrator. Although this directive is not intended to prevent a normal chain of command within the Corporation, it does preclude officers and employees from being subject to the supervision of anyone outside the Corporation, including the Secretary of Energy.

Subsection 1504c. provides for inclusion of USEC employees in the Federal Civil Service Retirement System and the Federal Employees' Retirement System, as appropriate, on the same terms as other Federal employees.

Subsection 1504d. preserves the rights of USEC employees from employment discrimination under applicable Federal laws and regulations.

Subsection 1504e. subjects USEC employees to Federal laws restricting employee conduct (5 U.S.C. Chapter 73), including the Hatch Political Activity Act.

Subsection 1504f. continues the compensation, benefits, and other employment conditions of employees who transfer to the USEC from other Federal jobs until changed by the USEC.

Subsection 1504g. exempts USEC employees who retired from Federal civil or military service prior to April 28, 1987 from Federal laws prohibiting employment of retirement-aged individuals (5 U.S.C. 3323(a)) and the simultaneous receipt of salary and retirement pay (5 U.S.C. 8344).

New AEA section 1505 governs the transfer of property from DOE to the USEC.

Subsection 1505a. directs the Secretary of Energy to transfer to the Administrator, upon the latter's request, all Federal property relating to the enrichment enterprise without charge.

Paragraph a.(1) provides for the transfer to the USEC of the gaseous diffusion enrichment plants and equipment at Paducah, Kentucky and Portsmouth, Ohio, and office facilities at Oak Ridge, Tennessee. The gaseous diffusion plant at Oak Ridge and gaseous centrifuge facilities (other than equipment used for replacement parts) in Portsmouth, Ohio are expressly excluded from the transfer and remain with DOE. Paragraph (1) also prohibits DOE from using the Oak Ridge plant to enrich uranium in competition with the USEC. In addition, it provides that the paragraph may not be read to prejudice the consideration of other sites for future enrichment plants.

The Committee believes that, under foreseeable market conditions, the existing gaseous diffusion plant in Oak Ridge, Tennessee and the existing gas centrifuge facilities in Portsmouth, Ohio, cannot be operated profitably. With the exception of equipment needed for replacement parts, these assets are left under the control of DOE. However, the Committee does intend to transfer to the Corporation the enrichment operations office located at the Oak Ridge plant. This office is responsible for operations management of the facilities in Paducah, Kentucky, and Portsmouth, Ohio, as well as other functions.

Paragraph a.(2) directs the Secretary of Energy to transfer the Oak Ridge, Tennessee gaseous diffusion enrichment plant to the USEC when it determines, after the year 2000, that it should be decommissioned.

Paragraph a.(3) provides for the transfer of property related to research and development of gaseous diffusion technology.

Paragraph a.(4) provides for the transfer of DOE's stocks of enriched uranium other than highly enriched uranium. It also directs DOE to loan the USEC two metric tons of highly enriched uranium for working inventory.

Paragraph a.(5) provides for the transfer of DOE civilian stocks of feed materials. It permits the USEC to use stocks of tails (the byproducts of the enrichment process) and military feed materials retained by DOE, provided it replaces them or compensates DOE for them. For purposes of paragraph (5), the Committee intends that DOE and the Corporation adopt the allocation contained in a memorandum on the use of DOE inventories dated February 5, 1985, from James W. Vaughan, Jr., Acting Assistant Secretary for Nuclear Energy, and William W. Hoover, Assistant Secretary for Defense Programs, to Donald P. Hodel, Secretary of Energy.

Paragraph a.(6) provides for the transfer of all other property related to the enrichment enterprise except items needed by DOE.

The final sentence of subsection a. also exempts the transfer of the enrichment plants from section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, commonly known as "Superfund" (42 U.S.C. 9620(h)). The exemption relieves DOE of the Superfund requirement that it disclose in any sales contract or deed conveying the enrichment plants to the USEC information about hazardous substances stored, released, or disposed of at the plants.

Subsection 1505b. directs the Secretary of Energy to grant the USEC DOE's rights in the Atomic Vapor Laser Isotope Separation (AVLIS) technology without charge, and to provide assistance to the USEC on a reimbursable basis to ensure commercial deployment of AVLIS. Subsection b. does not, however, provide for the transfer of any lasers or equipment to the USEC. The Department, which presently contracts with national laboratories for the performance of AVLIS and other enrichment research, is directed to give the Corporation necessary cooperation and support on a reimbursable basis for purposes of arranging the efficient performance of such research in the future. However, nothing in the Act should be construed as restricting the Corporation from funding AVLIS research and development activities as necessary to achieve the purposes of this title.

Subsection 1505c. directs the Secretary of Energy to provide the USEC, without charge, licenses to any inventions and access to any technical information useful to the enterprise.

Subsection 1505d. directs the Secretary of Energy to transfer to the USEC, without further appropriation, all unexpended appropriations, accounts receivable, and monies available relating to the enrichment enterprise.

Subsection 1505e. authorizes the President to transfer, without charge, additional real and personal property to the USEC in furtherance of the enrichment enterprise.

Subsection 1505f. provides that title to depleted uranium resulting from enrichment of uranium by the USEC for DOE shall remain with DOE.

New AEA section 1506 governs the capital structure of the USEC.

Subsection 1506a. provides that all of DOE's obligations chargeable to the appropriations transferred to the USEC become liabilities of the USEC upon commencement of operation of the USEC.

Subsection 1506b.(1) directs the USEC to issue capital stock to the United States in an amount representing the current book value of the assets transferred to the USEC. Book value is to be determined from the amount reported in the Uranium Enrichment Annual Report for fiscal year 1987, modified to reflect ordinary value changes, such as depreciation, occurring up to the point of transfer. The Committee intends the value of the natural uranium stockpile transferred to the Corporation to be set at original acquisition cost. The Committee does not intend the value of transferred assets to reflect any imputed interest that certain persons have argued has accrued under the existing AEA section 161v. pricing standard.

The Secretary of the Treasury is to hold the stock for the United States, but is to have no voice in the management of the USEC as a result of such role.

Subsection 1506b.(2) prohibits the sale or transfer of the stock without further legislative action.

Subsection 1506c. directs the USEC to pay dividends into the General Fund of the Treasury on the stock. All earnings of the USEC, less amounts retained for business purposes (including research and development expenses, capital investments, and cash reserves), are to be paid to the Treasury as dividends.

In deciding to pay, or not to pay, dividends and in setting the amount of such dividends, the Committee intends that the Administrator use reasonable judgment. On one hand, the Administrator must make the expenditures, investments and reservations of funds necessary to maintain the Corporation as a commercial enterprise operating on a profitable and efficient basis. At the same time, however, the Committee expects the Administrator to keep in mind that it is in the interest of the United States to receive a return on the investment represented by the Corporation. Thus, for example, "gold plating" of the Corporation's investments would be contrary to the Committee's intent.

Subsection 1506d requires the USEC to repay to the Treasury within twenty years an amount deemed to be the "Initial Debt," plus interest. The Initial Debt is established at \$364,000,000, which represents the total amount appropriated to the enrichment enterprise between fiscal years 1969 and 1986, less the total amount of revenues received by the enterprise over the same period. Were the same calculation performed through fiscal year 1990, it would result in revenues exceeding appropriations by about \$657,000,000 and, hence, a net overpayment to the Treasury rather than a debt.

Various parties, notably the General Accounting Office, have asserted in the past that the amount of unrecovered costs of the enrichment program are as large as \$11 billion or more under the existing cost-recovery pricing standard set out in AEA section 161v. Although there are those individuals who ascribe some legal validity to these calculations, the Committee does not accept them for the following reasons.

First, as a legal matter, these "unrecovered costs" merely constitute the present basis for pricing enrichment services. Under current law, they do not constitute an actual debt that can be recovered from enrichment customers. Neither the appropriation accounts of the Federal budget nor those of the Treasury carry any assigned value that is attributable to this so-called "debt."

Second, a large component of unrecovered costs is derived from the initial value assigned to enrichment program assets when the program began commercial operation in 1969. For the most part, investment in these assets was originally made for military purposes, specifically the production of atomic weapons. Thus, the value of these assets represented sunk costs that had nothing to do with the provision of commercial enrichment services.

Third, a major portion of the unrecovered costs asserted by GAO represents imputed interest. Accrual of this interest is a matter of administrative practices not statutory law. Furthermore, it does not constitute any actual borrowing by the enrichment enterprise.

Despite the fact that enrichment customers have funded all assets of the program (with the exception of initial assets and \$364 million), imputed interest has accrued and compounded on all program assets and has been reduced only by payments to the Treasury. In effect, the imputed interest represents a fixed charge that applies no matter what business situation the enrichment enterprise faces. Such a charge is inconsistent with operation in a competitive world market.

Fourth, the amount of unrecovered costs of the enrichment program that are represented by the book value of existing productive assets is not being lost but rather carried forward on the books of the Corporation as provided in section 1506. To the extent that the Corporation is able to return dividends to the Treasury consistent with operation in a competitive world market, the United States will in effect receive a return on these investments. To the extent that the Corporation's assets are sold as part of future privatization of the enrichment enterprise, the United States will receive a return of these unrecovered investments.

Fifth, as a practical matter, it is impossible for the enrichment program to recover the higher estimate of unrecovered costs as a formal debt and remain competitive in the world market for enrichment services.

For all of these reasons, the Committee concludes that it is both fair and necessary to establish the formal recovery of so-called "unrecovered costs."

Subsection 1506e. provides that receipt of stock under subsection c. and repayment of the Initial Debt under subsection d. constitutes the sole recovery by the United States of any previously unrecovered costs incurred by the United States for enrichment activities prior to enactment of AEA Title II.

New AEA section 1507 governs the issuance of bonds, notes, and other debt instruments of the USEC for purposes of financing its business activities.

Subsection 1507a. authorizes the USEC to issue debt instruments in an amount up to \$2,500,000,000 outstanding at any one time. The principal and interest are to be paid from business revenues. USEC bonds may not be deemed obligations of, and their payment may not be guaranteed by, the United States.

The Corporation may enter into binding covenants with bondholders, concerning the establishment of reserve funds and other appropriate matters, for purposes of enhancing the marketability of such bonds. Further, any bonds issued by the Corporation under section 1507 will not be backed by the full faith and credit of the United States. The principal of and interest on such bonds are instead to be paid solely from revenues of the Corporation. The authority to incur such indebtedness is fully authorized by the Act, without the need for further appropriations.

Subsection 1507b. authorizes the USEC to set the terms and conditions of its bonds, subject to two limitations: they must mature within 30 years and the USEC must give the Secretary of Treasury at least fifteen days notice before selling them. Subsection b. also exempts the USEC from the provisions of the Government Corporation Control Act that give the Secretary of the Treasury power over the issuance of obligations by government corporations. The

last sentence of subsection b. exempts the USEC from the Securities Exchange Act of 1934 (including the registration and reporting requirements of that Act).

Subsection 1507c. permits Federal agencies to purchase USEC bonds for investment using public funds, but prohibits the USEC from selling bonds to the Federal Financing Bank.

New AEA section 1508 provides formulas for setting prices for the USEC's enrichment services.

Subsection 1508a. requires the USEC to set the prices it charges its commercial customers in amounts that, over the long term, will enable the USEC to:

Recover the cost incurred by the USEC enriching uranium for such customers;

Repay the Initial Debt under section 1506d.;

Recover the commercial customers' allocable share of decommissioning and remedial action costs; and

Make a profit.

Subsection 1508a. in effect requires the USEC to set commercial enrichment prices on the basis of the competitive world market for enrichment services. The Committee believes that, under the pricing policies in the legislation, the Corporation will be able both to operate profitably and be competitive with foreign suppliers of enrichment services. However, should the world market price dip below a level that permits full recovery of the Corporation's costs, the Corporation is authorized to price its commercial services according to the market with no necessary expectation that these costs will be recovered at a later time. In short, recovery of cost and profitability are goals of the Corporation over the long term, but not legal requirements that must be satisfied when business conditions make their satisfaction impractical.

The Committee generally intends that the sufficiency of the Corporation's commercial pricing policies be judged over the long-term and in the context of business conditions prevailing over the long-term. No attempt has been made to define the "long-term" because the Corporation's pricing requirement is inherently subjective and significantly dependent upon the business judgment of the Administrator. Similarly, the Committee is aware that for various reasons, the world market price for enrichment services is in actuality likely to consist of a band of prices rather than a single number. The Corporation's approach to this and other specific issues must again be decided as a matter of business judgment. However, this judgment must of course be guided by the provisions of this section and ultimately the purposes of AEA Title II.

Subsection 1508b. requires the USEC to set the prices it charges DOE for low-assay enrichment services (i.e., enriching uranium up to 8-10 percent U-235) in amounts that, on a yearly basis, will enable the USEC to:

Recover the cost incurred by the USEC providing this service; and

Recover the allocable share of decommissioning and remedial action costs.

These prices are not to include amounts needed to repay the Initial Debt or make a profit.

Subsection 1508b. also sets the average "base charge" paid per separative work unit (the standard measure of enrichment services) by commercial customers as a ceiling price for the "base charge" for low-assay enrichment services performed for DOE. In the event that the price the USEC needs to charge DOE to recover its costs under subsection b. exceeds the ceiling price, subsection b. permits the USEC to defer the difference and collect it in DOE prices in later years. For these purposes, the base charge means the amount paid by a customer per separative work unit for low assay enrichment services (exclusive of any credits received under a voluntary overfeeding program), less the portion of such amount which represents the costs of decommissioning, decontamination, and remedial action.

Subsection 1508c. requires the USEC to set the price it charges DOE for high-assay enrichment services (i.e., enriching uranium above 8-10 percent U-235 for naval and some test reactor fuel) in amounts that, on a yearly basis, will enable the USEC to:

- Recover the cost incurred by the USEC providing this service; and

- Recover the allocable share of decommissioning and remedial action costs.

These prices are not to include amounts needed to repay the Initial Debt or make a profit. If DOE does not request any high-assay enrichment services in any year, subsection c. requires DOE to reimburse the USEC for the cost of maintaining the minimum level of operation of the high-assay production facility.

Subsection 1508d.(1) requires the USEC to recover through its enrichment prices the total estimated cost of ultimately decommissioning all three enrichment plants. The costs recovered must be sufficient to pay for decontamination, decommissioning and remedial action for particular property as of the point in time such actions are to be taken. Although subsection d. does not set a minimum annual amount to be collected for this purpose, it does require the USEC to recover at least 50 percent of the estimated total cost of decontamination and decommissioning for all property transferred to the Corporation (including the Oak Ridge Gaseous Diffusion Plant) by the year 2000.

Paragraph d.(2) requires the USEC to reevaluate the total estimated cost of decommissioning at least once every two years. With respect to the cost of decommissioning the Oak Ridge plant, the USEC's estimate may be based on the estimate made by DOE under paragraph (3).

Paragraph d.(3) requires the Secretary of Energy to evaluate the estimated cost of decommissioning the Oak Ridge plant at least once every two years. If estimates under paragraph (2) or (3) indicate that a shortfall in funding has occurred, the Committee intends this amount to be recovered prospectively from customers.

Paragraph d.(4) requires the USEC to allocate the estimated decommissioning costs attributable to low-assay enrichment between commercial customers and DOE in proportion to their use of the enrichment facilities. In setting out this principle, the Committee does not intend to preclude reasonable and practical methods for estimating respective responsibilities for decontamination and de-

commissioning, even if these methods do not yield absolutely precise results.

Paragraph d.(5) requires all decommissioning costs attributable to high-assay enrichment to be allocated to DOE. These costs are allocated to DOE alone because virtually all high-assay enrichment has been performed for military purposes.

New AEA section 1509 governs of the USEC's financial transactions. The Government Corporation Control Act (5 U.S.C. 9105) requires the Comptroller General to audit the USEC at least once every three years, using generally accepted accounting principles appropriate for commercial corporate transactions. The Committee intends that the Corporation structure its books so as to meet these standards. Section 1509 requires the USEC to retain an independent accounting firm to audit its financial transactions in fiscal years when the Comptroller General does not. The General Accounting Agency is to review these audits annually.

New AEA section 1510 requires the USEC to prepare annual reports of its activities. Subsection a. prescribes the content of these reports. Subsection b. governs the timing and distribution of these reports.

New AEA section 1511 governs the dissemination of sensitive information. Subsections a., b., and c. relate to the control of "Restricted Data." Restricted Data is defined by section 11y. of the Atomic Energy Act of 1954 (42 U.S.C. 2011(y)) to include classified data concerning the production of enriched uranium (as well as classified data concerning atomic weapons and nuclear power).

In general, section 1511 requires the USEC to be guided by the same principles as apply to DOE concerning the exchange of restricted data and the dissemination of scientific and technical information relating to atomic energy.

Subsection 1511a. requires the USEC to control the dissemination and declassification of Restricted Data in order to protect the common defense and security. Subsection a. does this by subjecting the USEC to the information control provisions of sections 141, 142a., and 142b. of the Atomic Energy Act of 1954 (42 U.S.C. 2161, 2162(a), and 2162(b)) by deeming the word "Commission" (otherwise defined by section 11f. of the Atomic Energy Act (42 U.S.C. 2011(f)) to mean only DOE and the NRC) to include the USEC for purposes of sections 141, 142a., 142b.

Subsection 1511b. prohibits the USEC from making or continuing in effect any contract, including contracts for the operation of any of its enrichment plants or for the conduct of any research and development activities unless the prescribed steps are taken to prevent the disclosure of Restricted Data to unauthorized persons. Contractors must agree in writing not to permit any individual access to restricted data until the Office of Personnel Management has made an investigation of the character, associations, and loyalty of the individual, and reports to the Corporation that such access will not endanger the common defense and security. Furthermore, the USEC will not employ or permit any individual access to restricted data without the same investigation and report unless the access is determined by the USEC to be consistent with the national interest.

Subsection 1511c. makes the restrictions on access to Restricted Data found in subsections b. through h. of section 145 of the Atomic Energy Act (42 U.S.C. 2165(b)-(h)) applicable to the USEC by deeming references to the "Commission" in such subsections to include the USEC and references to the "General Manager" to include the Administrator.

Subsection 1511d. requires the Administrator to keep the appropriate congressional committees fully and currently informed on the USEC's activities. To the extent consistent with the Restricted Data controls of section 1511, the USEC is to make available all documents requested by the chairman of any such committee.

Subsection 1511e. requires that, if the USEC submits to the President or the Office of Management and Budgets any document prepared for submission to Congress, it send copies to the appropriate committees of Congress at the same time it sends it to the President or OMB.

Subsection 1511f. limits the power of the USEC to withhold information to the powers set forth in this and other laws.

New AEA section 1512 makes certain of the patent law provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2181-2190) applicable to the USEC.

Subsection 1512a. deems the term "Commission" to include the USEC wherever the term appears in section 152 (42 U.S.C. 2182), 153b.(1) (42 U.S.C. 2183(b)(1)), and 158 (42 U.S.C. 2188) of the Atomic Energy Act. The effect of this action is:

to give the USEC legal title to any invention or discovery pertaining to uranium enrichment made or conceived in the course of work or research performed for the USEC (section 152); and

to give the USEC a license to use any patent of primary importance to uranium enrichment if the patent application was filed before September 1, 1979 (section 153b.).

Thus, subsection a. provides that the USEC will have the same rights to inventions or discoveries conceived by its contractors as DOE does with its contractors.

Subsection 1512b. requires DOE to notify the USEC of all inventions pertaining to uranium enrichment DOE becomes aware of through the notification requirements of section 151c. and 151d. of the Atomic Energy Act (42 U.S.C. 2181(c) and (d)). In addition, subsection b. requires DOE and the Commissioner of Patents to give the USEC access to all relevant reports and patent applications. These reports and applications will be held in strictest confidence by the Corporation. It may not release the information without approval of the inventor or owner except to carry out any legal provisions or under special circumstances determined by the USEC.

Subsection 1512c. authorizes the USEC to apply to DOE for a license to use certain patents that the USEC is not automatically licensed to use under section 153b. of the Atomic Energy Act. Subsection c. subjects USEC applications to the same procedural requirements (including hearings on the application and payment of royalties for use of the patent) as other applicants.

Subsection 1512d. permits a court, in a case in which the holder of a nuclear energy patent has been convicted of using the patent

in violation of the antitrust laws, to order the patent holder to license the USEC to use the patent.

Subsection 1512e. provides that the USEC shall not be required to pay compensation to any patent applicant whose patent is withheld for national security reasons under 35 U.S.C. 181-187.

Subsection 1512f. provides that the USEC is not responsible for paying any awards under section 157b.(3) of the Atomic Energy Act (42 U.S.C. 2187(b)(3)) or the judgment or settlement of any claim for patent infringement arising before the USEC is established.

Subsection 1512g. directs the USEC to keep informed of its rights and responsibilities under the patent provisions of the Atomic Energy Act and directs DOE to cooperate with the USEC in this effort. DOE shall inform the USEC of any matters affecting the USEC's rights and responsibilities and will seek and follow as appropriate the advice of the USEC on these matters.

New AEA section 1601 governs licensing of USEC facilities by the NRC. While the Committee believes that it would be appropriate for the existing gaseous diffusion plants to remain unlicensed while in the hands of a Federal Government corporation, application for licensing is required in recognition that, should the decision to privatize the USEC be made, licensing of the USEC's facilities will be a prerequisite.

Subsection 1601a. exempts the USEC and its contractors from NRC licensing and regulation with respect to the operation of the existing gaseous diffusion enrichment plants to the same extent that DOE and its contractors are exempt. This exemption ends, however, when the USEC and its contractors receive all necessary licenses in accordance with subsections b. and c.

Subsection 1601b. directs the NRC to issue rules within two years for licensing the USEC's gaseous diffusion plants.

Subsection 1601c. requires the USEC to apply for licenses within one year after the NRC issues rules under subsection b. Subsection c. also requires the USEC to prepare, and the NRC to adopt, an environmental impact statement on the licensing action. The subsection relieves the USEC of the National Environmental Policy Act requirements that the environmental impact statement consider the need for the gaseous diffusion plants, alternatives to them, or the cost-benefit analysis of continued operation of the plants.

Subsection 1601d. prohibits the USEC from providing any nuclear materials or facilities to any one not licensed to receive them under the Atomic Energy Act.

Subsection 1601e. subjects the USEC to NRC and Department of Transportation regulations pertaining to the packaging and transportation of nuclear materials.

New AEA subsection 1602 a. exempts the USEC from all State and local government taxes. Under 26 U.S.C. 501(c)(1), the USEC, as a Federal agency, is exempt from Federal taxation as well.

Subsection 1602b. directs the USEC, beginning in fiscal year 1997, to make annual payments in lieu of taxes to State and local governments where the USEC has facilities. The amount of such payments is to be determined by the USEC, but it may not be more than it would pay if it were a private industrial corporation subject to taxation and it may not be less than DOE would have paid if it still operated the enterprise.

Subsection 1602c. directs the USEC to make payments under subsection b. at the time when tax payments by private taxpayers are due. Subsection c. also prohibits the USEC from making payments for any period prior to fiscal year 1997.

Subsection 1602d. commits the USEC's determination of the proper amount of payments under subsection b. to the USEC's discretion alone.

New AEA subsection 1603a. deems certain references to the "Commission" or DOE in the Atomic Energy Act of 1954 to include the USEC. These references are in:

Section 105b. (42 U.S.C. 2135(b)) (reporting antitrust violations to the Attorney General);

Section 161c. (42 U.S.C. 2201(c)) (granting subpoena power);

Section 161k. (42 U.S.C. 2201(k)) (authorizing officers and employees to carry firearms and make arrests);

Section 161q. (42 U.S.C. 2201(q)) (authorizing the grant of easements and rights-of-way);

Section 165a. (42 U.S.C. 2205(a)) (prohibiting use of cost-plus-percentage-of-cost contracts);

Section 221a. (42 U.S.C. 2271(a)) (authorizing the President to use any Federal agency to protect Restricted Data and property);

Section 229 (42 U.S.C. 2278a) (prohibiting trespassing);

Section 230 (42 U.S.C. 2278b) (prohibiting photographing facilities); and

Section 232 (42 U.S.C. 2280) (seeking injunctions against violations of the Atomic Energy Act).

Subsection 1603b. empowers the Secretary of Energy to seize and operate USEC facilities licensed by the NRC if the NRC revokes the license and the Secretary determines that the public convenience and necessity or the needs of DOE require continued operation of the facility.

New AEA section 1604 permits the USEC to accept the assistance of Federal (civilian and military), State, and local government agencies.

New AEA section 1605 requires the USEC to conduct its activities consistent with the antitrust laws, although as a Federal agency the USEC is not subject to them. The Committee believes that it would be inappropriate to make the USEC and its officers and employees subject to the antitrust laws because the Corporation remains part of the Federal Government. The Committee intends, however, that the USEC avoid any collusive behavior with foreign competitors or any anticompetitive practices. The Committee believes that the instances in which the common defense and security or other aspects of the public interest outweigh the aspects of the public interest protected by antitrust policies will be rare, but in such instances the Corporation should act as the overall public interest requires.

New AEA section 1606 authorizes the Administrator, until the enrichment plants are licensed by the NRC, to indemnify USEC contractors to the same extent that the Secretary of Energy indemnifies its contractors under section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210)(the "Price-Anderson Act"). The second sentence provides that once the enrichment plants are licensed by the

NRC, the NRC is to treat the USEC as any other person licensed to operate an enrichment plant for purposes of providing indemnification under the Price-Anderson Act. Section 5(e) of Public Law 101-575, however, prohibits the NRC from indemnifying persons licensed to enrich uranium under the Price-Anderson Act. In light of Public Law 101-575, the NRC cannot indemnify the USEC, but the first sentence of section 1606 would still require the USEC to indemnify its contractors under the Price-Anderson Act.

New AEA section 1607 provides that AEA Title II should be construed liberally to effectuate Congress' intent that the USEC have adequate authority and flexibility to fulfill its responsibilities.

New AEA section 1608 provides for a report on and plan for the ultimate sale of the enterprise to a private owner. By deferring any decision on privatization, the Committee does not intend to indicate its approval or disapproval of privatization of the USEC. Rather, the Committee is deferring such a decision until after the Corporation has obtained operational status and its economic viability can be judged.

Subsection 1608a. requires the Administrator to submit an interim report three years after enactment of AEA Title II and a final report five years after enactment setting forth his or her views on the transfer of the enrichment enterprise to private ownership.

Subsection 1608b. requires the President to transmit his recommendations on the report, together with a plan and draft legislation if the President recommends privatization, to Congress within 180 days after receipt of the Administrator's final report.

New AEA section 1701 provides for a Uranium Decontamination and Decommissioning Fund to pay to clean up the enrichment plants at the end of their useful lives.

Subsection 1701a. establishes the Fund in the Treasury. The Fund is to include amounts recovered through enrichment prices for decommissioning the enrichment plants plus interest earned on such amounts.

Subsection 1701b. directs the Secretary of the Treasury to manage the Fund and report to Congress on its operations yearly.

New AEA section 1702 requires the USEC to deposit in the Fund, within sixty days of the end of each fiscal year, an amount equal to the decommissioning costs recovered during that year through enrichment prices.

New AEA section 1703 directs the USEC to decommission the enrichment plants and to pay the cost out of the Fund.

Section 10104

This section exempts the USEC from all Federal, State, and local environmental laws and the Occupational Safety and Health Act to the same extent as DOE as of the date of enactment. Four years after the date of enactment, the USEC will become subject to such laws to the same extent as a private corporation unless the President extends the exemption.

Section 10105

This section makes miscellaneous amendments to the Atomic Energy Act and other laws.

Subsection 10105(a)

This subsection amends the definition of "wholly-owned Government corporation" in the Government Corporation Control Act to include the USEC.

Subsection 10105(b)

This subsection amends the enrichment plant ownership provision of the Atomic Energy Act to permit the USEC (as well as DOE and NRC licensees) to operate enrichment plants.

Subsection 10105(c)

This subsection terminates DOE's authority to provide uranium enrichment services.

Subsection 10105(d)

This subsection exempts the USEC from oversight by the Defense Nuclear Facilities Safety Board.

Subsection 10105(e)

This subsection exempts the USEC from outlay reductions under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (the "Gramm-Rudman-Hollings Act").

Subsection 10105(f)

This subsection repeals the prohibition in the Energy and Water Development Appropriations Act, 1988 that forbids the executive branch to consider the transfer of the enrichment enterprise to private ownership.

Section 10106

This section limits total expenditures of the USEC for fiscal year 1991 to the amount of its total receipts during such period.

Section 10107

This section provides that if a court holds any provision of Subtitle A to be invalid, the remainder of the subtitle shall remain in force.

Section 10108

This section provides that Subtitle A shall take effect on the day following the end of the first full fiscal quarter following enactment of the subtitle, but that the Administrator or Acting Administrator may exercise the powers vested in him or her by section 1501a. of the Atomic Energy Act (as amended by section 10103 of Subtitle A) upon the date of enactment.

Section 10109

This section requires that all expenses incurred by either DOE or the USEC in connection with setting up the Corporation or transferring the enrichment enterprise to it be subject to appropriation.

SUBTITLE B—URANIUM

Part 1—Short Title, Findings and Purposes, Definitions

Section 10211

This section provides that Subtitle B of Title X may be cited as the "Uranium Security and Tailings Reclamation Act of 1991."

Section 10212

This section sets forth congressional findings on the status of the domestic uranium industry and states the purpose of Subtitle B.

Section 10213

This section defines terms used in Subtitle B.

Part 2—Uranium Revitalization

Section 10221

This section directs the USEC to establish a voluntary overfeeding program. This program is based on the fact that, to produce a given amount of enriched uranium, the USEC can either use less uranium feed material and greater amounts of electricity to power the gaseous diffusion process or greater amounts of uranium feed material and smaller amounts of electricity. Using greater amounts of uranium feed material is known as "overfeeding."

Subsection 10221(a)

This subsection directs the USEC to offer its customers the overfeeding option for at least five years beginning in fiscal year 1992.

Subsection 10221(b)

This subsection provides that the economic savings to the USEC that results from the reduced power requirements are to be passed on to the customer.

Subsection 10221(c)

This subsection provides that if any enrichment services customer does not supply additional uranium for overfeeding, the USEC may permit other customers to provide uranium for use in overfeeding the former's order.

Subsection 10221(d)

This subsection requires that any uranium used to overfeed under this program must be mined in the United States after enactment of the Act (or mined in the United States before enactment but never sold or transferred).

Subsection 10221(e)

This subsection directs the USEC to establish procedures implementing the program within 90 days of enactment of Subtitle B.

In the recent past the enrichment enterprise has engaged in overfeeding to reduce its costs by using its own stockpile of natural uranium feed materials. This stockpile is now nearly exhausted. Thus, offering the option of overfeeding to customers with provi-

sions for the crediting of power savings does not at this point deprive the enrichment enterprise of any economic opportunity.

The effect of the overfeeding program established by section 10221 should be to produce a modest increase in the demand for domestic uranium. One reason for the current low level of demand for domestic uranium by United States utilities is the existence of large inventories held by utilities. The overfeeding program will encourage the reduction of these inventories through its use in overfeeding.

The Corporation is required to operate the voluntary overfeeding program in such a manner as to make the program as economically attractive as possible to its enrichment services customers for the purpose of encouraging and facilitating the use of uranium for overfeeding by such customers pursuant to section 10221.

Section 10222

This section establishes a National Strategic Uranium Reserve under the direction and control of the Secretary of Energy. The Reserve is to be made up of the 50,000,000 pounds of natural uranium now held by DOE for defense purposes. Use of the Reserve is restricted to military and government research purposes. The amount of uranium provided for the reserve is approximately the same as the amount of uranium that is in current stockpiles and allocated to DOE's national defense activities.

In 1985, the Secretary of Energy allocated from existing stocks 68,900,000 pounds of uranium to meet future defense-related needs. The balance of the uranium inventory was allocated to commercial uses. The defense allocation is projected to be 50,185,000 pounds as of September 30, 1989. Section 10222 formalizes the existing state of affairs. The intent of the section is to ensure that the existing stockpile reserved for defense purposes is not available for overfeeding.

Section 10223

This section makes the Secretary of Energy responsible for overseeing the economic viability of the domestic uranium industry.

Subsection 10223(a)

This subsection directs the Secretary to exercise any authority under existing law to encourage the use of domestic uranium and to report to Congress annually on the action taken. This subsection does not, however, permit the Secretary to interfere with the USEC's enrichment business. The Secretary is prohibited from using any supervisory authority over the Administrator of the USEC under section 1501c. of AEA Title II.

Subsection 10223(b)

This subsection directs DOE to cooperate with the Department of Commerce, the United States Trade Representative, and other appropriate agencies to encourage the export of domestic uranium. The Secretary of Energy is required to develop recommendations and implement programs to promote such exports within 180 days of enactment of Subtitle B.

Section 10224

This section prohibits Federal agencies (except the Tennessee Valley Authority) from purchasing uranium mined outside of the United States or from foreign producers after the date of enactment of Title III.

Section 10225

This section directs the Secretary of Energy to adopt rules implementing Subtitle B.

Part 3—Remedial Action for Active Processing Sites

Section 10231

This section establishes a program for reimbursing the owners of active uranium or thorium processing sites for the cost of the reclamation, decommissioning, and remedial actions that are attributable to tailings that were generated in connection with the sale of uranium or thorium to the United States.

Subsection 10231(a)

This subsection provides that, as a general rule, the cost of reclamation, decommissioning, and remedial action at any "active" uranium or thorium processing site (generally defined by section 10213(1) of Subtitle B as any site for which an NRC license was in effect on or granted after January 1, 1978) is to be borne by the licensee.

Subsection 10231(b)(1)

This subsection authorizes the Secretary of Energy to reimburse such licensees for the portion of these costs—

(A) attributable to tailings generated on behalf of the United States; and

(B) incurred before January 1, 2003.

The Committee contemplates that any licensee of the Nuclear Regulatory Commission as of January 1, 1978 that produced uranium or thorium under contract for the Federal Government and that meets all other requirements of Subtitle C would be eligible to receive the appropriate reimbursement even though the licensee may now be licensed by a State under section 274 of the Atomic Energy Act of 1954 instead of by the NRC.

Paragraph (2) establishes the amount the Secretary may reimburse licensees under subsection (b)(1).

Subparagraph (A) provides that the amount of reimbursement may not exceed \$4.50 per dry short ton of uranium tailings. This limitation does not apply to thorium tailings.

Subparagraph (B) provides that the total payments made to all uranium licensees under the program may not exceed \$270,000,000.

Subparagraph (C) provides that the total payments made to all thorium licensees under the program may not exceed \$30,000,000.

Subparagraph (D) authorizes the Secretary to adjust the amounts in subparagraphs (A), (B), and (C) for inflation. This annual escalation is only intended to apply to the remaining amounts within the ceilings that have not been paid in reimbursement as of such point.

Subparagraph (E) provides that, notwithstanding subparagraph (A) if the amount reimbursed in accordance with subparagraph (A), as adjusted by subparagraph (D), is less than \$300,000,000 authorized, the Secretary may pro-rate the surplus among all licensees, resulting in payments in excess of \$4.50 per dry ton. Additional reimbursement under subparagraph (E) is only intended to be available for the costs of reclamation, decommissioning, and other remedial action that are attributable to tailings generated as an incident of sales to the United States.

Section 10232

This section directs the Secretary to adopt rules implementing the reimbursement program under section 10231.

Section 10233

This section authorizes a total appropriation of \$300,000,000, plus additional amounts necessary to adjust the total for inflation under section 10231(b)(2)(D), for the remedial action program. Section 10233 does not create an entitlement.

Part 4—Imports of Uranium, Enriched Uranium, and Uranium Enrichment Services

Section 10241

This section states the findings and purposes of Part 4 relating to the sale of natural and enriched uranium by non-market-economy countries at prices below production costs and the need to take appropriate actions to protect the national security and defense interests of the United States.

Section 10242

This section defines terms used in Part 4.

Section 10243

This section requires the United States International Trade Commission to investigate the sale of natural and enriched uranium and enrichment services by non-market-economy countries to operators of domestic nuclear power plants at prices below production costs. If the International Trade Commission finds that uranium, enriched uranium, or enrichment services are being offered by non-market-economy countries at prices below production costs, the President is required to report to Congress what actions are being taken by the Federal Government to discourage such practice.

Section 10244

This section requires the owner or operator of any civilian nuclear power plant to report to the Secretary of Energy each January 1 the country of origin of any natural or enriched uranium purchased or enrichment services contracted for during the previous year.

Section 10245

This section requires the Secretary of Energy to encourage State utility regulatory authorities to consider the importance of main-

taining a viable domestic uranium industry when deciding whether to allow recovery of uranium costs through rates charged to customers.

Section 10246

This section permits the USEC (or the Secretary until the USEC takes over the enrichment enterprise) to purchase enriched uranium at prices below the Corporation's production costs if necessary to reduce its production costs and maintain competitive prices. In the event the Corporation purchases enriched uranium at prices below its production cost and uses it to supply enrichment customers, any uranium feed material obtained from the customers may only be used to rebuild the Corporation's inventory or for overfeeding.

Title XI—Natural Gas

Section 11101

This section amends Natural Gas Act (NGA) sections 4, 5 and 7 to authorize an optional certificate (OC) procedure for the construction and operation of interstate natural gas pipelines. NGA section 7(c)(1) is amended to add a new subparagraph (G) which directs the Federal Energy Regulatory Commission (Commission) to issue a certificate of public convenience and necessity authorizing the construction, extension and operation of facilities if certain terms and conditions are attached to the certificate. The issuance of an OC would not require a hearing or further proof that the public convenience and necessity would be served by the facilities. Additionally, an OC would be non-exclusive and non-prejudicial to any other authorization under the NGA or the Natural Gas Policy Act of 1978 (NGPA). The scope of the Commission's NGA jurisdiction over an OC applicant not already a natural-gas company would be limited to the entity that would be the holder of the OC.

NGA section 7 is amended to add new subsections (i), (j) and (k). The new NGA section 7(i) specifies the terms and conditions that would apply to an OC. Because an OC pipeline may interconnect and operate in conjunction with existing interstate pipeline facilities, it is important that the terms and conditions applicable to an OC pipeline safeguard the interests of the customers of such existing pipelines. For this reason, the Commission would be authorized to issue an OC only if it found that the OC pipeline would not impair any certificate holder's ability to render adequate service to meet the present and reasonably foreseeable requirements of its customers. Additional protection for existing customers is provided by a prohibition on the cross subsidization of OC pipelines by rates and charges for other services subject to the Commission's jurisdiction. Another condition would preclude an OC holder from participating in any proceedings under the NGA to consider competing applications for the construction or extension of facilities that would serve the same market served by the OC holder.

The new NGA section 7(j)(1) prescribes a procedure for OC holders to file with the Commission copies of transportation and sales agreements. Section 7(j)(2) establishes a presumption that the rates, charges, classifications and practices contained in agreements filed

with the Commission under section 7(j)(1) are just and reasonable. Section 7(j)(2) also establishes a procedure by which persons who have made a bona fide offer to enter into a contract, or who have entered into a contract, for the transportation or sale of natural gas utilizing an OC pipeline may petition the Commission for review such rates, charges, classifications or practices, even if agreed to by such contract. If, after a hearing on the petition, the Commission determines that the OC holder's failure to provide that rate, charge, classification or practice requested by the petitioner is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall fix the rate, charge, classification or practice by order. The Commission, however, may not order the service requested by the petitioner if it finds that capacity on the OC pipeline is not available.

For OC pipelines, the procedure prescribed by the new NGA section 7(j) supplants the rate filing and review provisions of NGA sections 4 and 5. Consequently, this section amends NGA sections 4 and 5 to make sections 4(c), 4(d), 4(e), and 5(a) inapplicable to rates and charges for the transportation or sale of natural gas through OC pipelines. Notwithstanding this limitation, to the extent that the jurisdictional rates and charges or services of a pipeline other than an OC pipeline are affected by an OC pipeline, parties would retain the ability to bring such issues to the Commission's attention in proceedings under NGA sections 4 and 5 regarding the affected pipeline's rates and charges or services.

This section also amends NGA section 7 to make the NGA section 7(b) abandonment requirements inapplicable to a facility or service which has received an OC; however, if a non-OC certificate were obtained subsequently for such a facility or service, authorization pursuant to NGA section 7(b) would be required when the certificate holder sought to abandon the facility or service.

The new NGA section 7(k) prescribes procedures that would apply if the construction of an OC pipeline would result in the displacement of local distribution company (LDC) sales or transportation service. This procedure would not be triggered if an LDC failed to protest the construction. If an LDC protested on grounds that displacement would occur, the Commission would be required to set the matter for hearing and within 90 days of the LDC's protest issue an order on the threshold issue of whether such alleged displacement would occur. If the Commission made a finding of no displacement of LDC service, construction could proceed without further authorization. If, on the other hand, the Commission made a finding that displacement of LDC service would in fact occur, the applicant would have the option to have its OC application considered under the Commission's procedures for certificating non-OC facilities under traditional NGA section 7 certificate procedures. A party would be entitled to pursue judicial recourse should the Commission fail to comply with the statutory mandate to issue an order within 90 days of an LDC's protest.

The bypass protection afforded by this section is procedural and does not constitute a substantive prohibition on bypass. Clearly, the Commission currently has authority under existing NGA section 7 to determine, based on the facts, that the facilities and service necessary to effectuate a bypass would be in the public conven-

ience and necessity. The amendments to NGA section 7 made by this section do not affect such authority or alter the standard of review under existing authority. The procedural bypass protection afforded by new NGA section 7(k) is intended to apply only where the proposed OC construction would result in the displacement of existing sales or transportation service being provided by an LDC; an LDC may not invoke the procedure to prevent the issuance of an OC for the construction of facilities that would be used to provide new sales or transportation service to new customers, or incremental sales or transportation service to existing LDC customers. If the construction protested by an LDC under the new NGA section 7(k) represented only part of a more extensive application for an OC, the Commission would have the discretion to issue an OC for that portion of the proposed facilities not implicated in the NGA section 7(k) proceedings.

Under the OC procedure, a certificate may be issued without a hearing or further proof that the public convenience and necessity would be served, because a facility is assumed to be required by the public convenience and necessity if the applicant is willing to assume the full risk of the project. The statutory conditions that would attach to an OC under the new NGA section 7(i) would ensure that an OC holder bore this risk and would protect the interests of existing customers of non-OC pipelines that might be affected by an OC pipeline. Congress' determination of public convenience and necessity underlying the OC is based on the expected increase in pipeline competition and enhanced consumer access to alternative sources of natural gas that would result from easing the market entry and exit restrictions caused by potentially lengthy regulatory proceedings. The Committee notes that in affirming the OC procedure that the Commission has adopted by rule, the Federal appellate courts rejected claims that generic assumptions regarding whether a facility or service met the statutory prerequisites for certification were inconsistent with the Congressional purposes underlying the NGA. *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1034-35 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988); *Public Util. Com'n of State of Cal. v. FERC*, 900 F.2d 269 (D.C. Cir. 1990).

Because an OC would be an NGA section 7 certificate, State regulation of an OC pipeline would be preempted and the right of eminent domain would be available to the certificate holder under NGA section 7(h). In addition to the statutory conditions specified in the new NGA section 7(i), the Commission would retain full authority under NGA section 7(e) to attach to an OC such additional reasonable conditions as the public convenience and necessity may require. Because the issuance of an OC would be a "Federal action" and the Commission would have the discretion to condition the issuance of an OC, the National Environmental Policy Act of 1969 (NEPA) would apply. While this section amends NGA section 7 to direct the Commission to issue an OC without a hearing or further proof of the public convenience and necessity, the Committee intends for the Commission to use the NEPA process to conduct a detailed and extensive analysis of the environmental and other relevant aspects of an OC application, including consideration of pipeline route alternatives. The Committee intends further for the

Commission to use the NGA section 7(e) conditioning authority to impose appropriate environmental and routing conditions on any certificate issued under the OC procedure.

Section 11102

This section amends NGPA section 311(a) to: (1) remove limitations with respect to shippers on whose behalf natural gas may be transported under section 311; (2) authorize specifically the construction of interstate pipeline facilities to transport natural gas under section 311; and (3) provide a procedural safeguard in the event that the construction of interstate pipeline facilities under section 311 would result in the displacement of sales or transportation service being provided by an LDC.

Under current law, NGPA section 311(a)(1) permits the Commission, by rule or order, to authorize interstate pipelines to transport natural gas on behalf of intrastate pipelines and LDCs; NGPA section 311(a)(2) permits the Commission, by rule or order, to authorize intrastate pipelines to transport natural gas on behalf of interstate pipelines and LDCs served by interstate pipelines. If authorized by the Commission under NGPA section 311, a pipeline may transport natural gas in interstate commerce without a certificate under NGA section 7. The Commission had interpreted the NGPA section 311 "on behalf of" standard quite liberally and had utilized section 311 transportation as means to promote competition in natural gas markets. In particular, the Commission held the standard to be satisfied so long as the "on behalf of" entity received "some economic benefit" from the transportation. On April 6, 1990, the United States Court of Appeals for the District of Columbia Circuit, in the so-called *Hadson* decision, held the Commission's interpretation of the "on behalf of" standard to be inconsistent with the NGPA and therefore invalid. *Associated Gas Distributors v. FERC*, 899 F.2d 1250 (D.C. Cir. 1990), *reh'g denied*, No. 88-1856 (D.C. Cir. June 4, 1990).

This section amends NGPA section 311(a) to overturn the *Hadson* decision. This will promote greater competition in natural gas markets and further the Commission's open access transportation policy. NGPA section 311(a)(1) is amended to provide that in addition to transportation on behalf of an intrastate pipeline or an LDC, an interstate pipeline may transport natural gas on behalf of any other person including the interstate pipeline itself. Section 311(a)(1) also is amended to add a new subparagraph (C) to require that transportation be non-discriminatory. NGPA section 311(a)(2) is amended to provide that in addition to transportation on behalf of an interstate pipeline or an LDC served by an interstate pipeline, an intrastate pipeline may transport natural gas in interstate commerce (within the meaning of the NGA) on behalf of any other person including the intrastate pipeline itself. Because the transportation that the Commission could authorize under the amended NGPA section 311(a)(2) would be limited to interstate commerce within the meaning of the NGA, intrastate transportation could not be authorized by the Commission under this provision and would remain subject to State regulation.

Under current law, NGPA section 311 on its face applies only to the authorization of natural gas transportation and sales and does

not authorize explicitly the construction of facilities to effectuate such transportation and sales. The Commission has interpreted NGPA section 311 as conferring authority to construct such facilities, and while the Federal courts have tacitly upheld this interpretation, it has not been reviewed directly. This section amends NGPA section 311(a)(1) to authorize explicitly the construction of pipeline facilities. Under the new section 311(a)(1)(D), an interstate pipeline, upon sixty days notice to the affected State commission, may construct facilities for transportation service provided under section 311(a)(1). Such construction would not require authorization by the Commission and, therefore, NEPA would not apply to construction under authority of the NGPA. Other Federal and State environmental laws of substantive applicability would be unaffected. NGPA section 311(a)(1) would preempt State economic regulation of facilities constructed under its authority. The construction of intrastate pipelines for purposes of NGPA section 311(a)(2) transportation would be regulated by the States.

The new NGPA section 311(a)(1)(D) also provides procedures that would apply if the construction of interstate pipeline facilities under this authority would result in the displacement of LDC sales or transportation service. This procedure would not be triggered if an LDC failed to protest the construction. If an LDC protested on grounds that displacement would occur, the Commission would be required to set the matter for hearing and within 90 days of the LDC's protest issue an order on the threshold issue of whether such alleged displacement would occur. If the Commission made a finding of no displacement of LDC service, construction could proceed without further authorization. If, on the other hand, the Commission made a finding that displacement of LDC service would in fact occur, the interstate pipeline then would have the option to file a non-OC application under NGA section 7 for a certificate to construct the facilities. This application would be considered under the public convenience and necessity standard of NGA section 7. A party would be entitled to pursue judicial recourse should the Commission fail to comply with the statutory mandate to issue an order within 90 days of an LDC's protest.

The bypass protection afforded by this section is procedural and does not constitute a substantive prohibition on bypass. Clearly, the Commission currently has authority under existing NGA section 7 to determine, based on the facts, that the facilities and service necessary to effectuate a bypass would be in the public convenience and necessity. This section does not affect such authority or alter the standard of review under such authority. The procedural bypass protection afforded by this section is intended to apply only where the proposed construction would result in the displacement of existing sales or transportation service being provided by an LDC; an LDC may not invoke the procedure to prevent the construction of interstate pipeline facilities under new NGPA section 311(a)(1)(D) that would be used to provide new sales or transportation service to new customers, or incremental sales or transportation service to existing LDC customers.

Section 11103

This section would streamline NGA section 7 certificate proceedings by expediting the environmental review process under the National Environmental Policy Act of 1969.

Subsection 11103(a)

This subsection amends the NGA by adding a new section 7(c)(3) regarding NEPA compliance.

Major pipeline construction projects frequently involve the participation of a large number of Federal and State resource agencies. This creates problems regarding agency cooperation and the coordination of environmental reviews and often leads to inordinate delays in the Commission's certification of pipeline facilities. Subparagraph (A) of the new NGA section 7(c)(3) is intended to address this problem and provides that, for purposes of NEPA and other applicable environmental laws, the Commission's issuance of a certificate of public convenience and necessity is the only Federal action that may be considered a major Federal action requiring the preparation of an environmental impact statement (EIS). While the Commission still would be required to consult with and solicit comments from other Federal and State agencies, subparagraph (A) would authorize the Commission to set reasonable time limits for such consultation and the submittal of comments.

The process of accumulating environmental data and preparing environmental documents is frequently the most time-consuming aspect of the environmental review process in connection with a certificate application. This is an area where greater assistance to the Commission would expedite the environmental review process. The Council on Environmental Quality's (CEQ's) regulations implementing the procedural provisions of NEPA permit third-party contractors to prepare environmental documents, i.e., environmental impact statements and environmental assessments. 40 C.F.R. 1506.5. In rulemaking comments submitted to the Commission, CEQ has urged the Commission to permit third-party contractors to prepare environmental documents in connection with pipeline certificate applications. Subparagraphs (B) and (C) of the new NGA section 7(c)(3) address this issue.

Subparagraph (B) directs the Commission to permit, at the election of an applicant for a certificate, an applicant-funded contractor or consultant to prepare environmental documents. Subparagraph (B) requires that: (1) such third-party environmental contractors be selected from a list of persons or companies determined by the Commission to be qualified to do the work; and (2) the Commission establish the scope of work for such contractors and procedures to assure that a contractor has no financial or other potential conflict of interest in the outcome of the proceeding. Subparagraph (C) directs the Commission to: (1) permit an applicant, or an applicant-selected contractor, to prepare an environmental assessment (EA); and (2) adopt procedures to facilitate the submission of applicant-prepared EAs in conjunction with the filing of a certificate application. Both subparagraphs provide that the Commission remains responsible for compliance with NEPA.

Subparagraph (D) of the new NGA section 7(c)(3) states that the Commission shall not infer control or responsibility over nonjurisdictional activities for purposes of NEPA compliance. This provision is intended to address the Commission's practice as part of the NEPA process of reviewing nonjurisdictional facilities or activities that are constructed or undertaken with, or are related to, a jurisdictional project.

Subsection 11103(b)

This subsection directs the Commission within 12 months of enactment to amend its rules governing *ex parte* communications to clarify that such rules do not apply to communications between the Commission's environmental staff and other Federal and State agencies that are cooperating agencies in the NEPA process. Subsection (b) would require, however, that an accurate public record be kept of all such communications and that a party to a proceeding with respect to which such communications were made be given an opportunity to respond in writing.

Section 11104

This section addresses issues pertaining to rates and charges for jurisdictional natural gas sales and transportation service under the NGA.

Subsection 11104(a)

This subsection amends NGA section 4(d) to increase from 30 days to 60 days the notice required to be given to the Commission and to the public by a natural-gas company changing its rates and charges for jurisdictional sales and transportation services. The amendment parallels the comparable section of the Federal Power Act, section 205(d), and is intended to assist the Commission and the public in their initial review of pipeline rate filings. Because rate filings are often complex and voluminous, the additional time provided by this amendment should assist the Commission in resolving issues earlier in the rate review process.

Subsection 11104(b)

This subsection amends NGA section 4 to add a new subsection (g) which provides that, under such rules and regulations as the Commission may provide to preclude anticompetitive conduct, natural-gas companies may jointly file with the Commission rates for the sequential transportation of natural gas through their facilities. This provision would allow pipelines to post joint rates that would apply where the transportation of natural gas from the production area to the market entailed multiple pipeline movements. Producers, marketers and other shippers could more readily determine the total cost of transportation and could compete more effectively for sales.

Subsection 11104(c)

This subsection addresses issues raised in connection with the Gas Research Institute (GRI) surcharge. GRI is a collaborative research organization of the natural gas industry which performs extensive research, development and demonstration (RD&D) activi-

ties. GRI's projects currently are financed almost exclusively via direct Commission-approved surcharges on the jurisdictional throughput of interstate natural gas pipelines. Paragraph (1) of the subsection clarifies that changes in rate making procedures authorized under this Act, including the authorization of negotiated rates for jurisdictional natural gas sales and transportation service under the optional certificate procedure, are not intended to modify the Commission's existing authority under NGA section 4 to approve the recovery, in advance, of RD&D expenditures by natural-gas companies (including the GRI surcharge). Paragraph (2) addresses the April 19, 1991, decision of the United States Court of Appeals for the District of Columbia Circuit in *Process Gas Consumers v. FERC*, Case No. 89-1739, which remanded GRI's RD&D programs in natural gas vehicles and emissions control back to the Commission for further consideration. The Committee strongly supports RD&D activities in these areas and in paragraph (2) authorizes the Commission to allow the recovery by natural-gas companies of expenditures for GRI's natural gas vehicle and emissions control projects provided that the Commission finds that the benefits, including environmental benefits, from such activities to both existing and future ratepayers exceed all direct costs to both existing and future ratepayers.

Subsection 11104(d)

This subsection directs the Commission to report to the Committee and to the House of Representatives within six months of enactment of this Act with respect to the following natural gas regulatory issues: (1) natural gas transportation; (2) the interstate pipeline merchant function; and (3) natural gas ratemaking. The Commission's reports should do more than just catalogue the Commission's activities in these areas; the reports should specify the Commission's criteria for regulation and its plans for implementation of such criteria.

Subsection 11104(e)

This subsection addresses issues in connection with the authorization of natural gas imports and exports under NGA section 3. Paragraph (1) of the subsection directs the Secretary of Energy to delegate to the Commission authority to administer the provisions of NGA section 3. This would, in effect, restore the situation that existed prior to enactment of the Department of Energy Organization Act when authority under NGA section 3 was vested in the Commission's predecessor, the Federal Power Commission. Paragraph (2) amends NGA section 3 to require the Commission to condition any import authorization to redress any anti-competitive impacts on domestic natural gas producers. The anti-competitive impacts that the Commission would be required to redress include, but would not be limited to, competitive disparities resulting from different rates designs applied to the pipeline transportation of domestic and imported natural gas. The authority conferred by this amendment to NGA section 3 would not apply to imports of liquefied natural gas. The Committee intends that the authority to condition natural gas imports conferred by this amendment to NGA section 3 operate prospectively; the Commission may not use this

authority to condition natural gas import transactions authorized prior to the enactment of this Act. Paragraph (3) requires the Department of Justice, in consultation with the Department of Energy, the Commission, and the Office of United States Trade Representative, to report to the Committee and to the House of Representatives regarding DOE's and the Commission's authority under applicable law to address and remedy regulatory advantages that may be conferred on imported natural gas. This report would be required to be filed within six months of enactment of this Act. This report would assist in defining the scope of the Commission's authority to redress anti-competitive impacts on domestic producers under the amendment to NGA section 3.

Section 11105

This section amends section 403(c) of the Department of Energy Organization Act to add the issuance of a certificate of public convenience and necessity and the abandonment of facilities and services under the NGA to the list of functions that the Commission may conduct by rulemaking proceedings. Under current law, section 403(c) applies to the establishment of rates and charges under the Federal Power Act and the NGA and is silent with respect to the issuance of certificates and the authorization of abandonment under the NGA.

The courts have confirmed the Commission's authority to authorize abandonment and establish rates and charges by rulemaking. The United States Supreme Court upheld the Commission's generic abandonment authority with respect to wellhead sales of natural gas in its decision sustaining the Commission's Orders No. 451 and 451-A. *Mobil Oil Exploration & Producing Southeast, Inc. v. United Distribution Cos.*, 111 S. Ct. 615 (1991). The Commission's generic ratemaking authority was upheld by the United States Court of Appeals for the D.C. Circuit in its decision sustaining the Commission's Order No. 380. *Wisconsin Gas Co. v. FERC*, 770 F.2d 1144 (D.C. Cir. 1985) *cert. denied*, 476 U.S. 114 (1986).

With respect to certificate applications, this section confirms the Commission's well-established practice of processing applications on the basis of the written record if possible without a trial-type hearing. The Commission would retain the authority under the Administrative Procedure Act to order a trial-type hearing in the event that there are disputed issues of material fact that cannot be resolved on the basis of a written record.

Section 11106

This section amends NGA section 19, NGPA section 506, and Federal Power Act (FPA) section 313 with respect to procedures for rehearing and judicial review of Commission orders. These three statutory provisions are parallel and the amendments to each are identical.

Under current law, a party aggrieved by a Commission order must apply for rehearing of that order and the Commission must act on the party's application for rehearing before the party may seek judicial review of the Commission's order. Current law also provides that an application for rehearing may be deemed to have been denied if the Commission does not act on the application

within 30 days after it is filed. In practice, the Commission often issues orders granting rehearing for purposes of further consideration prior to the expiration of the statutory 30-day period. These orders are known as tolling orders. The purpose of a tolling order is to prevent an application for rehearing from having been deemed denied by reason of the Commission's inaction. The effect of a tolling order is to preclude an aggrieved party from seeking judicial review at the conclusion of the 30-day period. Once a tolling order is issued, the timing of an order on the merits of a party's rehearing application is within the Commission's sole discretion. Unless stayed by the Commission or by a Federal court, Commission orders are effective upon issuance and an aggrieved party must comply with the order during the pendency of the rehearing application.

This section amends the rehearing provisions of the NGA, the NGPA, and the FPA to extend the period for Commission action on applications for rehearing and to clarify that such Commission action must be a final order. No longer may the Commission preclude judicial review of its orders by issuing a tolling order prior to the expiration of the statutory period for rehearing. The period for rehearing is extended from 30 days to 60 days after the filing of an application for rehearing. For good cause, the Commission may extend the period for rehearing an additional 90 days (or an additional 120 days in the case of a rulemaking proceeding).

This section also amends the judicial review provisions of the NGA, the NGPA, and the FPA. The period within which an aggrieved party must file for judicial review of a Commission order is shortened from 60 days to 30 days after a Commission order on the application for rehearing. Also, section 11106 would require that a party's petition for review be filed with the Chairman of the Commission and state with specificity the grounds upon which it is based. Under current law, a petition may be filed with any member of the Commission and there is no requirement that it contain any detailed specification of the issues on which review is sought. The purpose of these changes is to expedite the judicial review of Commission orders.

Section 11107

This section provides limited antitrust relief for independent natural gas producer cooperatives. This section is intended to benefit small independent producers whose volumes of natural gas production are insufficient to be readily marketable.

Subsection 11107(a)

This subsection defines the terms used in this section. The term "independent producer" is limited to independent producers whose natural gas production does not exceed six million cubic feet per day. The term is defined further to exclude interstate pipelines, intrastate pipelines, local distribution companies and their affiliates as defined in the NGPA. The term "independent producer cooperative" is defined to mean a group of independent producers formed and operated for the purpose of pooling natural gas to enable cooperative members to bargain effectively for the sale of

natural gas. A cooperative, however, may not be formed for the purpose of raising natural gas prices.

Subsection 11107(b)

This subsection prescribes the legal standard to be applied to independent producer cooperatives. If challenged in a civil action under Federal antitrust laws, the formation and operation of an independent producer cooperative shall not be deemed illegal *per se*, but shall be illegal only if the anticompetitive effects of such activities substantially outweigh the procompetitive effects. Injunctive relief shall be available against an independent producer cooperative that violates this standard.

Subsection 11107(c)

This subsection is intended to ensure that the narrow antitrust protection afforded to independent producer cooperatives in subsection (b) does not by implication call into question the lawfulness of the range of current natural gas industry marketing activities. The most common of these arrangements is the joint operating agreement (JOA) under which a well, field, plant or unit operator markets the natural gas production of fellow working interest owners. Typically, an operator under a JOA could be marketing far in excess of six million cubic feet of natural gas per day. JOAs and other current activities should continue to be considered and evaluated in the context of existing antitrust law. Furthermore, subsection (b) is not intended to alter the rule-of-reason standard under antitrust law or limit the scope of relief that the Department of Justice may provide through the business review letter process.

Section 11108

This section addresses jurisdictional issues pertaining to vehicular natural gas (VNG). This section is intended to promote the development of a retail distribution infrastructure for VNG by eliminating regulatory disincentives for participation by existing natural gas distributors and automotive fuel marketers.

Subsection 11108(a)

This subsection amends NGA section 1 to add a new subsection (d), the purpose of which is to assure that persons who are not otherwise natural-gas companies or who are primarily subject to regulation by a State commission will not be subject to NGA jurisdiction by reason of their sale (including the sale for resale) or transportation of VNG. Subsection (a) also amends NGA section 2 to define "Vehicular Natural Gas" as "natural gas that is ultimately used as fuel in a motor vehicle." It is intended that the term "motor vehicle" be construed broadly to include both vehicles now technologically capable of fueling with natural gas, such as automobiles, trucks, boats and trains, as well as other vehicles that may become technologically capable of fueling with natural gas in the future.

The purpose of subsection (a) is to resolve statutory ambiguities over whether persons might forfeit exemptions from NGA jurisdiction on account of their VNG activities. Persons that are already natural-gas companies, such as interstate pipelines, will remain

subject to NGA jurisdiction with respect to both their VNG and non-VNG activities. VNG transactions by persons that are not otherwise natural-gas companies, such as local distribution companies and certain producers, will not be subject to NGA jurisdiction. VNG transactions by certain other companies that are already natural-gas companies but that are primarily subject to regulation by a State commission (as defined in NGA section 2(8)) are also exempt from NGA regulation. Examples of such persons include LDCs that hold service area determinations under NGA section 7(f) or limited jurisdiction certificates under section 7(c). Finally, in the case of an integrated company, VNG transactions will be deemed exempt from NGA jurisdiction if they are engaged in by that portion of the company that is subject to State commission regulation.

Subsection (a) achieves the purposes of S. 402, the Vehicular Natural Gas Jurisdiction Act of 1991. An earlier version of this legislation, S. 3085, the Vehicular Natural Gas Jurisdiction Act of 1990, was introduced late in the 101st Congress and was reported by the Committee. The Committee intends that section 11108 incorporate the legislative history of its predecessor, S. 3085, and in particular those portions of the Committee report in which the Committee expressed its understanding and expectations regarding how the Commission would exercise its jurisdiction over VNG activities that might be undertaken by K/N Energy, Inc. (S. Rep. No. 552, 101st Cong., 2nd Sess. 34-35 (1990)).

Subsection 11108(b)

This subsection provides that the transportation of natural gas in closed containers, or the sale of natural gas, by a person who is not otherwise a public utility to a person for use as fuel in motor vehicle shall not be deemed the transportation or sale of natural gas within the meaning of any State law, regulation or order in effect prior to January 1, 1989. This provision would not apply to any State law, regulation or order relating to public safety. The purpose of subsection (b) is to preclude the inadvertent State regulation of VNG pursuant to statutes that could not have been intended to apply to such utilization of natural gas. Nothing in subsection (b), however, deprives a State of the prerogative to regulate VNG sales if a State concludes that such regulation is necessary or appropriate.

Subsection 11108(c)

This subsection provides that a company shall not be considered to be a gas utility company under the Public Utility Holding Company Act of 1935 (PUHCA) solely by virtue of entering the business of selling or distributing VNG. This subsection provides further that the status of companies already registered under PUHCA would not be affected if such companies entered the VNG business.

Section 11109

This section amends NGA section 7 to streamline the procedures for the issuance of certificates of public convenience and necessity.

Subsection 11109(a)

This subsection amends NGA section 7(c)(1) by redesignating current subparagraph (B) as new subparagraph (C) and adding a new subparagraph (B) to provide that, with regard to an application for a certificate of public convenience and necessity, the certificate shall be deemed issued where no protest is received within 60 days of public notice of the application. This provision would expedite the approval of applications for noncontroversial facilities and services that are required by law to have certificate authority.

Subsection 11109(b)

This subsection directs the Commission within 90 days of enactment to initiate a rulemaking proceeding to establish procedures for dealing expeditiously with protests that do not raise material issues of fact necessitating an evidentiary hearing.

Subsection 11109(c)

This subsection amends NGA section 7(c)(1) by adding a new subparagraph (D) to provide that the term "facilities" as used in NGA section 7 shall not include the repair or replacement of existing facilities that have or soon will become physically deteriorated or obsolete. A certificate will not be required for such repair or replacement provided that: (1) a reduction or abandonment of services does not result; (2) a substantially similar designed delivery capacity is maintained; and (3) the cost does not exceed \$20 million per project, as adjusted pursuant to the Implicit Price Deflator for GNP. The preceding conditions would not apply to repairs or replacements necessary to deal with emergencies, potentially unsafe conditions, or otherwise comply with the Natural Gas Pipeline Safety Act of 1968. Notwithstanding this exemption from the certificate requirement under NGA section 7, a natural-gas company's recovery of costs incurred for such repairs or replacements in rates for services subject to the Commission's jurisdiction shall remain subject to review under NGA sections 4 and 5.

Subsection 11109(d)

This subsection amends NGA section 7(c)(1) by adding a new subparagraph (E) to provide that contractual commitments by bona fide shippers for firm natural gas service to be rendered by the proposed facilities shall be conclusive evidence of the need for such facilities and shall be sufficient to dismiss any claim of mutual exclusivity by another applicant with respect to such facilities. This standard is intended to address the so-called *Ashbacher* rule and the need for a comparative hearing where mutually exclusive applications are pending. Obviously, if contractual commitments do not exist for all of the service to be rendered by a proposed facility, there would not be a showing sufficient to dismiss a claim of mutual exclusivity. The new NGA section 7(c)(1)(E) would not apply in cases under the Commission's OC regulations where an applicant must bear the financial risks of any project and the issue of a case-specific need determination do not arise.

Subsection 11109(e)

This subsection authorizes the Commission in proceedings under NGA section 7 to phase its consideration of issues raised in connection with a certificate application and to issue an initial order containing preliminary findings with respect to particular issues. The issuance of a certificate would remain subject to final order based on the complete record of the proceeding. Subsection (e) would codify the Commission's current practice of using separate procedural tracks for the environmental and non-environmental issues associated with a certificate application. Under this practice, preliminary consideration of economic and competitive issues is not delayed by the pendency of environmental review of the proposed facility.

Section 11110

This section amends NGA section 7(a) by redesignating the current subsection as paragraph (1) and adding a new paragraph (2) to authorize the Commission to order the interconnection of an interstate pipeline with another person's production area facilities for purposes of the receipt of natural gas by the interstate pipeline. Under paragraph (2), the Commission would be authorized to order the physical connection of an interstate pipeline's transportation facilities with a petitioner's production or gathering facilities, intrastate pipeline, or OC pipeline certificated pursuant to NGA section 7(c)(1)(G) (as added by this Act). The Commission would be authorized to order an interconnection with a petitioner's intrastate pipeline or OC pipeline only if such pipeline was located in the "production area" as defined by the Commission.

Other conditions incorporated as part of the interconnection authority under new NGA section 7(a)(2) include the following. First, an interstate pipeline cannot be compelled to enlarge its transportation facilities for purposes of receiving a petitioner's natural gas. Second, the Commission may not compel an interconnection when to do so would impair an interstate pipeline's ability to render adequate service to meet the present and reasonable foreseeable requirements of its customers. Third, an interconnection may be ordered only for purposes of an interstate pipeline receiving natural gas from a petitioner, i.e., an interstate pipeline may not be ordered under paragraph (2) to establish a physical connection to deliver natural gas downstream. Fourth, a petitioner shall be responsible for all costs of the interconnection. Finally, the Commission may prescribe reasonable terms governing the interconnection.

Section 11111

This section amends NGA section 4 to add a new subsection (h) which authorizes the Commission, upon making certain findings after a hearing, to exempt the natural gas cost component of a natural-gas company's rates and charges from regulation under the NGA. The Commission would be authorized to issue an order exempting such costs from NGA regulation upon a finding that: (1) the natural-gas company provides transportation for natural gas owned by another person comparable to that provided by the natu-

ral-gas company for natural gas that it sells for resale; and (2) the market that the natural-gas company serves is competitive.

It is intended that the authority conferred by section 11111 be limited to the natural gas cost component of a natural-gas company's rates and charges. To the extent that a natural-gas company's rates and charges for the sale for resale of natural gas include as part of a bundled rate charges for transportation or other related services, such other charges would remain fully regulated.

Section 11112

This section adds a new subsection (k) to section 401 of the Department of Energy Organization Act. The new subsection (k) states that, for purposes of the DOE Organization Act or any other Act, discussions on matters of general policy by all members of the Commission shall not be considered a meeting.

The Government in the Sunshine Act defines the term "meeting" to mean "deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business." A "meeting" is subject to the public notice, record keeping and open session requirements of the Sunshine Act.

The Committee believes that ambiguity regarding the scope of the Sunshine Act "meeting" requirement inhibits the efficiency and timeliness of Commission policy making. Section 11112 clarifies that discussions on matters of general policy involving all of the commissioners do not constitute a "meeting" for purposes of the Sunshine Act. The limitation to "discussions . . . on matters of general policy" is intended to make clear that, notwithstanding this section, a "meeting" within the meaning of the Sunshine Act will remain necessary in order for the Commission to issue orders and transact other official agency business.

This section also makes clear that the exemption from the Sunshine Act "meeting" requirement applies only when the discussions on matters of general policy take place among all sitting commissioners. The requirement that all commissioners participate in policy discussions is intended to prevent a single commissioner (or two commissioners) from being excluded from the Commission's policy making process. This requirement is intended to foster collegial and efficient policy formulation by the Commission. Also, because the Commission is required by statute to be split along party lines, the requirement that all commissioners participate ensures that the minority's full participation in Commission policy making is not frustrated.

Title XII—Outer Continental Shelf

Section 12101

This section amends the Outer Continental Shelf Lands Act (OCSLA) to add a new title II relating to coastal State and community Outer Continental Shelf impact assistance.

New section 201 of the OCSLA sets forth the short title.

New section 202 of the OCSLA sets forth definitions.

The Committee recognizes that there are certain suspended OCS wells which have been production tested but had not commenced regular production by February 5, 1991, because of lack of support or transportation facilities, or for other reasons. Congress intends to include as new revenues under the new section 202(4)(C) all royalties attributable to production from wells which commence regular production on or after February 5, 1991, notwithstanding the fact that such wells were production tested prior to that date.

New subsection 203(a) of the OCSLA establishes an interest bearing special account in the Treasury of the United States known as the Coastal State and Community Outer Continental Shelf Impact Assistance Fund ("the Fund"). Payments made from the Fund pursuant to the provisions of the title are subject to appropriation. The remaining provisions of the subsection are self-explanatory.

New subsection 203(b) of the OCSLA provides that beginning in fiscal year 1992, the Secretary shall pay into the Fund not later than 60 days after the end of the preceding fiscal year, an amount equal to 37.5 percent of all new revenues derived during the preceding fiscal year which are attributable to an OCS lease any part of which is within 200 geographical miles of the coast line.

New section 204 of the OCSLA relates to the disposition of the Fund. The criteria and formula for distribution of the Fund is patterned after the provisions of subsection 308(b)(16) U.S.C. 1456a(b)) of the Coastal Zone Management Act (CZMA) prior to its amendment by Pub. L. No. 101-508 in 1990. That section of the CZMA governed the distribution of certain grants under the Coastal Energy Impact Program.

New paragraph 204(a)(1) of the OCSLA provides that, subject to appropriation, the Secretary of the Interior is to transmit annually to a coastal State the revenues payable to such State pursuant to this title, plus interest thereon.

New paragraph 204(a)(2) of the OCSLA specifies the amounts to be paid to the coastal States based upon: the amount of acreage newly leased by the Federal Government in the preceding fiscal year which is adjacent to a coastal State; the volume of oil and gas produced in the preceding fiscal year from OCS acreage adjacent to the coastal State and leased by the Federal Government; and the volume of oil and natural gas produced from OCS acreage leased by the Federal Government which is first landed in the coastal State in the preceding fiscal year.

New paragraph 204(a)(3) of the OCSLA sets forth steps to be taken by the Secretary of the Interior after making the calculations required under paragraph 204(a)(2) to provide for certain minimum and maximum payments to coastal States under the circumstances specified.

New paragraph 204(a)(4) of the OCSLA provides that for purposes of making the calculations under paragraph 204(a)(2), OCS acreage is adjacent to a particular coastal State if such acreage lies on the State's side of the extended lateral seaward boundaries of such State. The paragraph sets forth the means for determining lateral seaward boundaries. The provision is the same as subparagraph 308(b)(4)(B) of the CZMA, with conforming changes, prior to its amendment by Pub. L. No. 101-508.

New subsection 204(b) of the OCSLA provides that revenues paid to a coastal State under subsection (a) shall be used by the State and its subdivisions, as the legislature of the State may direct, giving priority to those subdivisions of the State socially, environmentally or economically impacted by the development of minerals on the OCS for (i) planning, (ii) construction and maintenance of public facilities, (iii) environmental activities, and (iv) provision of public services.

New section 205 of the OCSLA States that the payment of funds pursuant to this title shall be in addition to any payments made to a State under any other provisions of the OCSLA or any other provision of law. For example, payments under this title shall be in addition to and in no way affect payments made to the States under section 8(g) of the OCSLA.

Subsection 12102(a)

This subsection requires the President to submit a report to the Congress within 6 months after the date of enactment containing the President's recommendations and findings regarding the availability of areas of the OCS for oil and gas leasing, development and production.

Subsection 12102(b)

This subsection sets forth requirements for the report contents.

Title XIII—Research, development, demonstration and commercialization activities

Section 13101

This section directs the Secretary of Energy (the Secretary) to establish research and development priorities for the Department of Energy and to include in those priorities consideration of the following criteria: (1) the potential to increase the Nation's energy independence and reduce reliance on imported oil; (2) the projected cost-effectiveness of the energy or energy efficiency resource to be produced or saved; (3) the comparative environmental and public health impacts of the energy research and development; (4) the national security impact of the energy produced or saved, including the projected contribution to reduced reliance on imported oil and to the diversity of the domestic energy resource mix; (5) the obstacles inherent in private industry's continued or future development of energy technologies such as solar, fuel cells, fusion, superconductivity, nuclear fission, electric power, clean coal technologies, oil shale, oil and natural gas recovery and utilization, and hydrogen; (6) the contribution of any given research and development activity to scientific knowledge and to the nation's competitiveness; and (7) the anticipated impact of the results of the Department's activities on targeted industries and industrial and manufacturing processes.

Section 13102

This section directs the Secretary, in consultation with the Secretary's Energy Advisory Board, to prepare within one year after the enactment of this section a management plan for the conduct of research, development, and commercialization of energy technologies

that is consistent with the goals and purposes of the Act and the priorities set forth in section 13101. Following submission of the first management plan, the Secretary is directed to submit a revised management plan biennially to coincide with the submittal of the President's annual budget submission to Congress.

Section 13103

This section directs the Secretary to carry out a program to promote the development and commercialization of new and advanced natural gas utilization technologies, including but not limited to: technologies that may control stationary source emissions and improve efficiency; natural gas storage technologies; technologies that may present expanded use of transportation fuel alternatives and greater emissions controls; and electrochemical energy conversion technologies. The Secretary is directed to solicit proposals and is authorized to enter into cooperative agreements for activities under this section.

Subsection 13103(c)

This subsection sets forth the policy for cost-sharing for demonstration projects under this program. In general, the Committee intends for demonstration projects to be cost-shared with the private sector to the maximum extent possible and, therefore, directs the Secretary to seek to obtain at least 50 percent of the cost from non-Federal sources. The Committee believes, however, that the Secretary should have flexibility in determining the extent to which non-Federal funding is necessary and appropriate. To that end, the Secretary is authorized to reduce the percentage of non-Federal funding required on a case-by-case basis using the standards set forth in the statutory language. The Committee expects that the Secretary, in exercising this discretion, will consider where appropriate the value of in-kind contributions in making a determination of the necessary and appropriate level of non-Federal support.

The Committee strongly supports expanded research, development, and demonstration (RD&D) activities by the Department of Energy to accelerate the market entry of natural gas use for transportation purposes, including natural gas vehicles (NGVs). Greater utilization of NGVs will reduce the Nation's dependence on imported oil; take advantage of the abundant supplies of domestic natural gas that are available at reasonable prices; and benefit the environment, particularly in some of the most-polluted urban areas. Specifically, the Committee supports expanded RD&D activities in the areas of NGV commercialization, including engine and emissions control technology and refueling and gas compression technology for home, commercial, and industrial use; and the development of refueling and maintenance infrastructure necessary to support the widespread use of NGVs. The Committee also strongly supports increased appropriations for the Department's activities in these areas.

Section 13104

This section directs the Secretary to carry out a program of research, development, and demonstration to increase the recoverable natural gas resource base. The Secretary is directed to solicit

proposals and is authorized to enter into cooperative agreements for activities under this section.

Subsection 13104(c) sets forth the policy for cost-sharing for this program, consistent with the policy set forth in subsection 13103(c).

Natural gas currently accounts for approximately one quarter of the energy consumed in the United States. Additional demand for natural gas is likely to materialize as a result of environmental imperatives, and the need to displace imported oil and fuel additions to electric generating capacity. In view of this, the Committee wishes to emphasize the importance of developing the capability to sustain natural gas production at competitive prices in the future. Furthermore, the current surplus of deliverable natural gas and the resultant depressed wellhead prices should not obscure the need for continued innovation in resource recovery technology.

The United States' natural gas resource base is vast. Proved natural gas reserves represent only a small percentage of the natural gas resource base that may be recoverable with advanced technology. According to the Department's Energy Information Administration (EIA), proved natural gas reserves in the United States totaled 168 trillion cubic feet (tcf) as of December 31, 1988. EIA estimates that using conventional production technology and not including resources unavailable due to leasing restrictions on certain Federal onshore and offshore lands, the United States' economically recoverable natural gas resource base in the lower-48 states totals 728 tcf. When advanced exploration and production technology is included, the economically recoverable lower-48 states resource base grows to 1,083 tcf.

Unconventional natural gas, including gas from tight formations, Devonian shale and coalbed methane, represents a significant portion of the resource base. Unconventional gas accounts for 295 tcf, or 40 percent, of EIA's base case lower-48 states resource base estimate and for 503 tcf, or 46 percent, of the advance technology case estimate.

As current natural gas reserves are depleted, future domestic supplies of natural gas will depend on the volume of currently unproved recoverable resources that can be converted to reserves. The amount of natural gas that can be recovered from the total resource base is contingent on the pace of technological innovation. The ability to recover unconventional natural gas resources at competitive prices will become increasingly important to the maintenance of natural gas deliverability in the future. The Department's continuing involvement in natural gas supply research is essential to ensure the recovery of a large percentage of the total domestic natural gas resource base.

The Committee notes with approval the Administration's budget request for gas supply enhancement research has increased in recent years. Still, the Congress consistently has seen fit to appropriate even greater sums for such research. The Committee strongly supports increased funding for natural gas recovery research in view of the importance of such research given the role that natural gas can play as part of a national energy strategy.

Section 13105

This section directs the Secretary to establish and carry out a program of research, development and demonstration on high efficiency heat engines. The program shall emphasize advanced gas turbine cycles, and the incorporation of energy efficient materials in advanced gas turbine cycles for high efficiency electric and automotive power generation including advanced combined cycle turbines, steam-injected gas turbines, and intercooled steam-injected gas turbines. The Secretary is authorized to enter into joint ventures with those parties wishing to construct and demonstrate high efficiency heat engines.

Section 13106

This section directs the Secretary to carry out a research and development program on oil shale that includes applied research on eastern oil shale and that is conducted in cooperation with universities and the private sector. The Committee expects that research and development carried out under this section would be cost-shared to the maximum extent possible.

Section 13107

This section directs the Secretary to carry out a research, development, and demonstration program on western oil shale. In developing this program, the Secretary is directed to consider establishment and utilization of at least one field testing center and to consider sites with existing oil shale mining and processing infrastructure and facilities.

Subsection 13107(b) sets forth the policy for cost-sharing for this program, consistent with the policy set forth in subsection 13103(c).

Section 13108

This section directs the Secretary to carry out a program of research, development, and demonstration of a high-temperature superconducting electric power system. The Secretary is directed to solicit proposals and may enter into cooperative agreements for activities under this section.

Subsection 13108(c) sets forth the policy for cost-sharing for this program, consistent with the policy set forth in subsection 13103(c).

Sections 13109 and 13110

These sections amend the Renewable Energy and Energy Efficiency Technology Competitiveness Act (Pub. L. No. 101-218) to remove the authorization limitation for each of two program areas: energy efficiency research and development, and renewable energy research and development. In recent years, Congress has consistently provided an appropriation in excess of the currently authorized level for these programs. Therefore, the Committee believes that it is appropriate to remove the authorization limitation for each of these program areas.

Section 13111

This section directs the Secretary to expand the program of research, development, and demonstration for natural gas and elec-

tric heating and cooling technologies for residential and commercial buildings.

Subsection 13111(b) sets forth the policy for cost-sharing for this program, consistent with the policy set forth in subsection 13103(c).

Section 13112

This section directs the Secretary to carry out a research, development, and demonstration program on fusion energy that is structured in a way that will lead to commercial demonstration of the technological feasibility of fusion energy for the production of electricity after the year 2010. The Secretary is directed to prepare a comprehensive management plan for this program that includes milestones and schedules for technology development and estimates of budget and program management resource requirements.

Subsection 13112(c) sets forth the policy for cost-sharing for this program, consistent with the policy set forth in subsection 13103(c).

Section 13113

This section directs the Secretary to conduct a program of research and development on techniques related to improving electric vehicles, electric-hybrid vehicles and battery technology. The following technologies are to be included in the program: high efficiency electric power trains, including advanced motors and hybrid power trains for vehicle range improvement; light-weight body structures for vehicle weight reduction; advanced batteries with specific power for electric vehicle application; and primary batteries and fuel cells for hybrid vehicle application.

The Secretary is directed to solicit proposals and may enter into cooperative agreements to carry out the programs under this section.

Subsection 13113(e)

This subsection sets forth the policy for cost-sharing for this program. In general, the Committee intends for research and development under this program to be cost-shared with the private sector to the maximum extent possible and, therefore, directs the Secretary to seek to obtain at least 50 percent of the cost from non-Federal sources. The Committee believes, however, that the Secretary should have flexibility in determining the extent to which non-Federal funding is necessary and appropriate. To that end, the Secretary is authorized to reduce the percentage of non-Federal funding required on a case-by-case basis using the standards set forth in the statutory language. The Committee expects that the Secretary, in exercising this discretion, will consider where appropriate the value of in-kind contributions in making a determination of the necessary and appropriate level of non-Federal support.

Section 13114

This section directs the Secretary to carry out a program of research, development, and demonstration to increase the economic recoverability of domestic oil resources that includes both advanced secondary oil recovery and tertiary oil recovery. The Secretary is authorized to enter into cooperative agreements for activities under this section.

Subsection 13114(c) sets forth the policy for cost-sharing for this program, consistent with the policy set forth in subsection 13103(c).

Section 13115

This section states that it is the policy of the United States to promote the development and production, by all means consistent with sound engineering and environmental practices, of deposits of tar sands.

Subsection (b) of this section defines tar sands.

Subsection (c) of this section requires the Secretary, in consultation with the Secretary of the Interior, to submit a study to Congress within one year. The study shall identify and evaluate the development potential of sources of tar sands in the United States (including eastern and western sources). The study shall identify and evaluate processes for extracting oil from tar sand sources, including existing tar sand waste tailings, and evaluate the environmental benefits of, and the potential for co-production of minerals and metals from, such processes.

Subsection (d) of this section authorizes to be appropriated such sums as are necessary for each of fiscal years 1992 and 1993.

Section 13116

This section directs the Secretary, in consultation with the Secretary of Transportation, to conduct a study of the potential costs and benefits of telecommuting. Telecommuting would allow people to work from home on a computer or telephone rather than commuting to a central workplace. The study is required to be completed within 180 days after the date of enactment of this Act.

Section 13117

This section directs the Secretary to conduct a study of the potential for minimizing the volume and toxic lifetime of nuclear waste. The Secretary is directed to include in this study an analysis of the viability of existing technologies to reduce the volume or toxicity of waste and an assessment of the extent of research and development required for new technologies for this purpose.

Section 13118

This section directs the Secretary to submit to Congress a report on whether the current programs and plans for management of nuclear waste as mandated by the Nuclear Waste Policy Act of 1982 are adequate for the management of any additional volumes or categories of nuclear waste that might be generated by any new nuclear power plants that might be constructed and licensed after the date of enactment of this Act.

The Committee intends that this report include as comprehensive an assessment as possible of any new categories of waste or waste byproducts that might be produced by advanced nuclear reactor technologies, such as high-temperature gas-cooled reactors or liquid metal reactors, and that might be different in nature, or require different methods of disposal, from what has been produced by the current generation of light water reactor technology. The Committee also intends that this report include as comprehensive an assessment as possible of anticipated increased volumes of spent

fuel or high-level waste produced by new nuclear power plants and include an assessment of whether there may be a need for additional repositories for deep geologic disposal.

Section 13119

This section directs the Secretary to enter into agreements with qualified entities to provide post-secondary programs for the promotion of mathematics and science education for low-income and first generation college students. This program is intended to supplement the Department of Education's Special Program for Students from Disadvantaged Backgrounds (TRIO), which provides teaching materials, scholarships and tutoring in math and science for over 500,000 low-income students at the secondary level.

Qualified entities under this section may provide support in the form of education materials, teacher training, seminars, and academic counseling. Support provided under these programs may go either directly to the low-income, first generation college student or to the institution of higher learning itself.

The programs under this section are intended to supplement, and be developed in conjunction with, current mathematics and science education programs at the Department of Energy and the Department of Education including the programs under the Excellence in Mathematics, Science and Engineering and Education Act of 1990 (Pub. L. No. 101-589).

Title XIV—Coal, Coal Technology and Electricity

SUBTITLE A—COAL AND COAL TECHNOLOGY

Subsection 14101(a)

This subsection directs the Secretary of Energy (the Secretary) to carry out a research, development, and demonstration program for advanced coal-based technologies, in consultation with the National Coal Council, and sets forth goals and objectives for the program. These goals and objectives include development of technologies that will achieve greater control of sulfur oxides, oxides of nitrogen, and air toxics; development of technologies that will be capable of converting coal into cost-competitive transportation fuels; demonstration of technologies that will convert coal into synthetic gaseous, liquid, and solid fuels; and demonstration of technologies that use coal-derived fuels. The Secretary is directed to design the program to assure that these technologies will be commercially available by 2010 and is directed to consider the potential benefit of additional solicitations under the clean coal technology program to accomplish these goals.

Subsection 14101(b)

This subsection requires the Secretary to submit a detailed report to Congress within 240 days of the date of enactment of this Act that includes a description of ongoing research and development activities, a plan for achieving the goals of the mandated program, and any recommendations for expanding the current clean coal technology program. The Committee believes that the clean

coal program has been successful to date and expects that all five rounds of the current program be carried out.

Subsection 14101(d)

This subsection contains a listing of technologies that the Secretary is required to include in the advanced coal technology program. This list is not meant to be an exclusive one, but rather to be representative of the core technologies that the Secretary should include in the program. Moreover, the technologies to be included in the program are intended to expand the scope of those technologies now part of the clean coal technology program to include advanced uses of coal for purposes broader than the generation of electricity, such as for the production of transportation fuels and non-fuel coal byproducts.

Section 14102

This section requires the Secretary to submit a plan to Congress for the research, development, and demonstration of technologies for non-fuel uses of coal. The plan shall address and evaluate issues relating to non-fuel uses of coal including the following: production of coke and other carbon products derived from coal; production, by hydrocracking and other means, of coal-derived, carbon-based chemical intermediates that are precursors of value-added chemicals and polymers; production of chemicals from coal-derived synthesis gas; coal treatment processes including methods such as solvent extraction techniques that produce low-ash, low-sulfur, coal based chemical feed stocks; and waste utilization including recovery processing and marketing of products derived from sulfur, carbon dioxide, nitrogen, and ash from coal.

The Secretary may propose joint ventures to accelerate the development and commercialization of technologies for the non-fuel use of coal. In addition, the Secretary may provide financial assistance for a research project under the plan to the extent that the Secretary finds the project furthers the achievement of the goals and purposes of the Act, offers promise for commercial application, and has a reasonable prospect of leveraging support for at least 50 percent of its direct costs through non-Federal funds.

A total of \$20 million is authorized over fiscal years 1992, 1993, and 1994 to carry out this program.

Section 14103

This section directs the Secretary to carry out a research, development, demonstration, and commercialization program for coal refining technologies. The program is set up to include the full range of coal-derived fuels and feedstocks from high- and low-sulfur coals to sub-bituminous coals and lignites, including peat. Coal refining technologies intended to be developed under this program would be those capable of producing a broad range of clean-burning transportation fuels, compliance boiler fuels, fuel additives, lubricants, chemical feedstocks, and hydrogen- and carbon-based manufactured products. Technologies to be developed include, but are not limited to, processes which produce coal-derived byproducts by such means as direct and indirect liquefaction, hydrocracking, integrated refining and cogeneration, and gasification.

The Committee believes that coal refining technologies offer significant potential for not only producing clean fuel for energy and electricity production but also for producing coal byproducts that may have considerable commercial value as non-fuels. This section will expand the Department of Energy's current coal technology program, which emphasizes control of acid rain precursors, to place greater emphasis on pre-combustion coal refining technologies. The Department's current program in coal refining is very narrow in scope and has not, in the Committee's opinion, been adequately structured to date to explore the full potential of coal refining technologies.

Within 120 days after the date of enactment of this section, the Secretary is required to submit to Congress a detailed description of its ongoing programs as well as a detailed plan for new and expanded programs to carry out the purposes of this section. The Committee intends that the Department's expanded coal refining program be structured to foster the development of new technologies in a timely fashion, to produce a broad range of coal-derived fuel and non-fuel products, to reduce the cost of producing these products, to result in the control of emissions from coal-derived fuels, and to provide commercially available technology by 2000.

This section directs the Secretary to solicit proposals for cost-shared demonstration projects of coal refining processes and authorizes the Secretary to enter into agreements with non-Federal entities to undertake these projects.

Subsection 14103(d)

This subsection sets forth the policy for cost-sharing for demonstration projects under this program. In general, the Committee intends for demonstration projects to be cost-shared with the private sector to the maximum extent possible and, therefore, directs the Secretary to seek to obtain at least 50 percent of the cost from non-Federal sources. The Committee believes, however, that the Secretary should have flexibility in determining the extent to which non-Federal funding is necessary and appropriate. To that end, the Secretary is authorized to reduce the percentage of non-Federal funding required on a case-by-case basis using the standards set forth in the statutory language. The Committee expects that the Secretary, in exercising this discretion, will consider where appropriate the value of in-kind contributions in making a determination of the necessary and appropriate level of non-Federal support.

Section 14104

This section directs the Secretary to carry out a research, development, and demonstration program for underground coal gasification technology. In carrying out this program, the Secretary is expected to give equal consideration to all ranks of coal.

This section directs the Secretary to solicit proposals and is authorized to provide financial assistance for at least one demonstration project of underground coal gasification technology.

Subsection 14104(c) sets forth the policy for cost-sharing for this program, consistent with the policy set forth in subsection 14103(d).

Section 14105

This section requires the Secretary to pursue a program of research and development with respect to the technologies needed to expand the use of low-rank coals. In implementing the program, the Secretary is authorized to enter into contracts, cooperative agreements, and jointly sponsored research programs with, and provide grants to, qualified persons.

The Committee notes that the Secretary is currently undertaking a jointly sponsored research program relating to low rank coals with the University of North Dakota Energy and Environmental Research Center (UNDEERC). The Committee commends the work being done at UNDEERC. The Committee strongly urges the Secretary to continue the cooperative agreement between the Department and UNDEERC in order to ensure that this important work continues. In addition, the Committee strongly urges the Secretary to designate the University of North Dakota Energy and Environmental Research Center as a center for excellence in low-rank coal research and development.

The Committee encourages the Secretary to pursue similar cooperative agreements with other parties as appropriate.

Section 14106

This section requires the Secretary to carry out a proof-of-concept program in magnetohydrodynamics. In carrying out this program, the Secretary is directed to solicit proposals from the private sector and seek to enter into an agreement that provides for cost-sharing with non-Federal entities.

Subsection 14106(c) sets forth the policy for cost-sharing for this program, consistent with the policy set forth in subsection 14103(d).

Section 14107

This section directs the Secretary to conduct a research, development, and demonstration program for utilizing ultra-clean coal-water slurry in diesel locomotive engines.

Section 14108

This section requires the Secretary to submit to Congress a plan for expanding the export of coal from the United States.

Section 14109

This section establishes a Clean Coal Technology Export Coordinating Council to facilitate and expand the export and use of clean coal technologies and directs the Council to place a priority on the export and use of these technologies in lesser-developed countries. This section outlines the membership of the Council, the duties of the Council, and the requirements for consultation with private industry and other interested members of the public. This section also requires the Council to develop a data base and information dissemination system relating to clean coal technologies.

Section 14110

This section requires the Secretary to prepare a report on the status of technologies for combining coal with other materials, such as oil or water fuel mixtures.

Section 14111

This section directs the Secretary to establish a national clearing house for the exchange and dissemination of technical information relating to coal and coal-derived fuels. The Secretary is authorized to select two institutions of higher education to manage and coordinate the clearing house activities and is authorized to provide grants to those institutions. The Committee intends that private industry participate and provide the principal financial support for this clearing house. The Committee expects the Secretary to be aggressive in seeking private sector participation.

Section 14112

This section directs the Secretary to conduct a comprehensive study on the institutional, legal, and regulatory barriers to increased utilization of coal combustion byproducts, such as ash, slag, and flue gas desulfurization.

Section 14113

This section requires the Secretary to establish a data base and prepare a report on coal transportation rates and distribution.

SUBTITLE B—ELECTRICITY

Section 14201

This section addresses the so-called WEPCo issue and is titled "Applicability of New Source Review to Existing Electric Utility Steam Generating Units."

Under the Clean Air Act, more stringent regulatory requirements apply to "new" as compared to "existing" stationary sources. An existing source, however, can become subject to new source requirements if it is "modified." The term "modification" is defined in the Clean Air Act and in the new source performance standard (NSPS) and prevention of significant deterioration program (PSD) regulations promulgated under the Clean Air Act. Since 1988, the staff of the Environmental Protection Agency (EPA) has reinterpreted the established modification regulations to bring more existing sources under the new source requirements.

In 1988, Wisconsin Electric Power Company (WEPCo) proposed to repair certain aging boilers. EPA informed the company that the repairs were considered "non-routine" and would trigger the NSPS and PSD regulations normally applied to new sources. EPA interpreted its new source regulations to require a comparison of WEPCo's "actual" pre-modification emissions (at less than 100 percent capacity utilization) with "potential" (i.e., 100 percent capacity utilization, 24 hours per day, 365 days a year) post-modification emissions to determine whether emissions would increase due to the "non-routine" repair. WEPCo's unit failed this test, as virtually all will. The consequence of failing the test is that a unit must either comply with the best available control technology (BACT) re-

quirements applied to "new" sources or "net out" its emissions (which usually involves a commitment to limit capacity utilization).

On January 19, 1990, the United States Court of Appeals for the Seventh Circuit affirmed in part and vacated in part EPA's WEPCo interpretation and remanded the case for further proceedings. *Wisconsin Electric Power Co. v. Reilly*, 893 F.2d 901 (7th Cir. 1990). The court agreed with EPA that changes to the plant were sufficient to trigger NSPS and PSD review, but disagreed with EPA's method of calculating whether an emissions increase would occur for PSD purposes. Subsequent to judicial review, several EPA pronouncements evidenced the agency's intention to construe the court's decision very narrowly.

The WEPCo policy goes far beyond a single utility project. In addition to WEPCo's repair project, EPA has applied its interpretation of the new source regulations to an oil-to-gas conversion project and to a powerplant interested in hosting a demonstration project under the Department of Energy's clean coal technology (CCT) program. As a result, EPA's WEPCo policy has created uneasiness in the electric utility industry when planning major capital investments in existing powerplants. Critics of the WEPCo policy contend that EPA's methodology for determining whether a change constitutes a "modification" will result in a finding of increased emissions even where a powerplant shifts to a cleaner fuel or a more efficient technology.

The Department of Energy and electric utilities have expressed concern that EPA's policy could adversely affect the reliability of the electric system. For example, the WEPCo policy might discourage utilities from undertaking maintenance and refurbishment activities and might result in utilities opting to remove older powerplants from service rather than undertaking life extension projects. The WEPCo policy might also discourage modifications intended to improve powerplant efficiency and to facilitate the displacement of imported oil with natural gas.

The Committee's Subcommittee on Energy Research and Development received testimony on the energy implications of the WEPCo policy at a May 8, 1990, hearing on S. 1848, the Natural Gas Cofiring Promotion Act of 1989 (S. Hrg. 101-963). Richard Schmalensee of the President's Council of Economic Advisers (CEA) testified on behalf of the Administration and outlined a proposal for a comprehensive legislative solution to the WEPCo issue.

The WEPCo issue was debated during consideration of the Clean Air Act Amendments of 1990. It was argued that EPA's policy would deter electric utilities from undertaking cost-effective emissions reductions and that this would add greatly to the cost of compliance with the acid deposition title of the bill. The Clean Air bills passed by the Senate (S. 1630) and the House (H.R. 3030) included WEPCo provisions far less comprehensive than the Administration's proposal.

During the conference on the Clean Air Act Amendments, 31 Senators (including 12 members of the Senate Committee on Energy and Natural Resources) joined in a letter to the chairman of the conference advocating the adoption of a simplified version of the Administration's WEPCo proposal. The conference report did not include a generic WEPCo provision because the conferees were

unable to resolve differences between the House and Senate bills. The conference report did include some CCT-specific WEPCo provisions. In the statement of managers, the conferees instructed EPA to move quickly to resolve the WEPCo issue.

After the conference report failed to address WEPCo, eight members of the Committee wrote to the President and urged that he implement the Administration proposal by administrative action. Coincidental with enactment of the Clean Air Act Amendments, EPA Administrator William Reilly committed to CEA Chairman Michael Boskin on October 26, 1990, that "[t]o the extent permitted by law, EPA will revise the Agency's draft interpretative rule on WEPCo within 4 months to conform to the Administration's recent legislative proposal, ..."

On March 18, 1991, Mr. Schmalensee of CEA testified before the Committee regarding section 5101 of S. 341 and the Administration's progress in attempting to resolve the WEPCo issue through administrative action. (S. Hrg. 102-5 (pt. 10)). Mr. Schmalensee testified that he had received assurances from EPA that an interpretative rule and a notice-and-comment rulemaking on the WEPCo issue would be ready for publication in the Federal Register by June. Mr. Schmalensee testified further that, while it appeared that it would be possible to implement a substantial part of the Administration's WEPCo proposal through administrative action, the Administration would continue to view favorably legislation that enacted the Administration's original proposal.

This section embodies a "WEPCo fix" consistent with the Administration's original proposal. As reported by the Committee, this section represents a more comprehensive resolution of the issue than the provision originally introduced.

Subsection 14201(a)

This subsection provides a test for ascertaining past achievable emissions at an electric utility steam generating unit (unit) for purposes of determining whether to apply NSPS. Under this test, a physical or operational change at a unit will not be treated as a modification if it does not increase the maximum hourly emissions of any pollutant regulated under section 111 of the Clean Air Act above the maximum hourly emissions achievable at that unit during the last five years of operation prior to the change. The Committee intends that a unit be examined on the basis of maximum hourly emissions during the last five years that it was actually operating, rather than on the basis of the five years immediately prior to the change during which the unit may have been moth-balled a substantial part of the time.

Subsection 14201(b)

This subsection makes clear that a "pollution control project" shall not be considered a physical or operational change for purposes of section 111 (NSPS), Part C (PSD) or Part D (nonattainment) of the Clean Air Act. The term "pollution control project" is defined to include, but is not limited to, technological systems of sulfur dioxide, nitrogen oxide and particulate control (including clean coal technologies) and temporary or permanent conversions to lower sulfur fuels, including the physical or operational changes

necessary to utilize such fuels. Examples of such conversions include oil-to-natural gas fuel switching, cofiring natural gas with coal, and switching to low-sulfur coal.

Subsection 14201(c)

This subsection addresses physical or operational changes that are not pollution control projects. Such changes might include, for example, equipment repair or upgrading. Such a change shall not be treated as a modification for purposes of Part C or Part D of the Clean Air Act unless it results in a significant net increase in representative annual emissions during normal operations. The term "normal operations" is intended to refer to a period that may include operations at full capacity. For purposes of projecting future annual emissions attributable to any increase in capacity utilization, the Administrator is directed to exclude that portion of any such increased utilization due to factors unrelated to the physical or operational change. In particular, an increase in projected capacity utilization equal to the rate of electricity demand growth for the utility system as a whole would be excluded from this calculation.

Subsection 14201(d)

This subsection limits the applicability of the preceding three subsections. Such subsections shall not apply if a physical or operational change at a unit increases its maximum achievable capacity above that achievable during the unit's last five years of operation prior to the change, or such other period demonstrated by the permittee to be more representative. For example, the last five years of operation prior to the change may not be representative of maximum achievable capacity due to age-related deterioration. The Committee intends to give a permittee an opportunity to establish that a period other than the five years of operation prior to a change is more representative of maximum achievable capacity during normal operations.

Subsection 14201(e)

This subsection codifies EPA's so-called reconstruction rule (40 C.F.R. 60.15) for purposes of determining whether NSPS should apply to a physical or operational change (other than a pollution control project under subsection (b)).

Subsection 14201(f)

This subsection makes clear that nitrogen oxide (NO_x) control technology installed under the mandate of title IV of the Clean Air Act, as amended in 1990 will satisfy the best available control technology requirement that might be imposed as a result of new source review. Paragraph (2) of subsection (e) makes clear that any state or local air permitting authority retains the right to impose more stringent NO_x limitations.

Subsection 14201(g)

This subsection makes clear that none of the preceding subsections may be construed to authorize an emissions increase that

causes or contributes to a violation of applicable national ambient air quality standards, PSD increments or visibility limitations.

Section 14202

This section requires the Secretary to submit a report on the physical impediments to transfer of excess electrical energy from regions with surpluses to regions with shortages.

Section 14203

This section states that State regulatory authorities are not required to base calculations of avoided cost, under the Public Utility Regulatory Policies Act (PURPA), on the rates for or the costs of demonstration projects under the Department's clean coal technology program. Under PURPA, utilities must buy power from qualifying facilities (QFs) at what is known as "avoided cost," which is the cost a utility avoids by not generating power itself or not buying it elsewhere. In order to calculate avoided cost, State regulatory authorities generally either use a competitive bidding process or they base the estimate on the cost of the utility's most recently planned or constructed facility. The concern is that the cost of a clean coal demonstration project may be more expensive than a conventional plant. Therefore, in cases where a State regulatory authority calculates avoided cost based upon the cost of the most recent facility, there is the possibility that avoided cost might be set artificially high. As a result, the rates established for power bought from QFs might be set artificially high.

The purpose of this section is to encourage utilities to invest in clean coal technologies without the risk that the potentially higher cost of a demonstration would cause an unreasonable jump in its overall costs. This section does not require a State regulatory authority to do anything, nor does it direct any State as to how to conduct its business. This section simply encourages State regulatory authorities not to include these potentially higher costs in their calculations of avoided cost.

Section 14204

This section sets out a process for establishing Federal regulatory incentives for clean coal technologies and encourages State regulatory authorities to consider similar incentives for these technologies. This section also requires the Secretary to report to Congress on progress made in encouraging States to provide these incentives. The provisions of this section are essentially the same as provisions passed by the Senate in 1990 in the Clean Air Act Amendments.

With respect to Federal regulatory incentives, this section directs the Federal Energy Regulatory Commission to conduct a rulemaking to establish a demonstration program for regulatory incentives for clean coal technologies. The demonstration program would last only five years and would be designed to cover no more than four units in each technology class. At the end of the demonstration program, FERC is directed to review the merits of the program and decide whether to extend it or make it permanent. This section also directs FERC to establish a process to negotiate with developers of clean coal projects to agree on cost caps and preapproval of prudence if costs fall within those cost caps. Also included in this

section is a provision that directs FERC to give priority in its selection of units to be provided regulatory incentives to units located in states where the State regulatory authority has adopted an incentive program.

With respect to State regulatory incentives, this section encourages State regulatory authorities to provide regulatory incentives for utilities to invest in clean coal technologies. This section does not require a State regulatory authority to adopt regulatory incentives, nor does it direct any State as to how to conduct its business. This section simply encourages State regulatory authorities to adopt incentives for these technologies.

Title XV—Public Utility Holding Company Act Reform

Subsection 15101(a)

Title XV is intended to remove the corporate obstacles to independent power production contained in the Public Utility Holding Company Act of 1935 (PUHCA). However, paragraph (1) of subsection (a) uses the term "exempt wholesale generator" (EWG), rather than the term "independent power producer" (IPP), to designate entities exempt from PUHCA in order to clarify that the legislation is dealing with structural problems in PUHCA. The term IPP generally denotes an entity that receives market pricing under the Federal Power Act. Since the legislation does not deal with pricing of power it adopts different terminology for purposes of clarity.

Under paragraph (1), an EWG is basically a corporate person who is engaged exclusively in the wholesale generation business. Section 2(a)(11)(B) of PUHCA mentioned in paragraph (1) references downward affiliates. Thus, for purposes of the legislation an EWG could be an "EWG holding company" as well as an individual EWG affiliate engaged in developing specific projects.

The definition of an EWG has been drafted so as to permit an EWG to sell wholesale power that it has not necessarily generated itself. It appears that buyers of wholesale power may frequently desire to purchase capacity in increments that exceed what the most economical unit would produce. Consequently, the legislation would permit an EWG, for example, to generate 350 MW and purchase an additional 50 MW in order to meet a purchaser's 400 MW capacity need.

Paragraph (1) excludes affiliates of a registered holding company that are in existence as of the date of enactment from being EWGs, unless the SEC consents. Without this provision a number of existing affiliates of registered companies would automatically become exempt from the Holding Company Act upon enactment and thus be able to circumvent the approvals required for affiliates of registered companies under subsection (g).

Under the definition contained in paragraph (1), the Committee does not intend an EWG to be able to own a Qualifying Facility under the Public Utility Regulatory Policies Act of 1978 (PURPA).

Finally, paragraph (1) provides that in order for a particular company to be an EWG (and thus be exempt from PUHCA) it must provide notice of its status as an EWG to the Securities and Exchange Commission (SEC). It is conceivable that in certain circumstances some utility developers may not want a given generating

company to have EWG status. The requirement for notice gives a wholesale generating company the election of having or not having EWG status.

EWGs may only own "eligible facilities". Under paragraph (2) of subsection (a), an "eligible facility" is any generating facility which is used exclusively for wholesale generation and for which any regulatory approvals required under subsection (c) have been obtained. For purposes of this definition, a "facility" includes a portion of a facility. Thus, a given generating unit could produce power for sale at wholesale and retail, and the undivided portion dedicated exclusively to the production of wholesale power could be an "eligible facility" owned by an EWG. Finally, a "facility" includes facilities that are under construction or for which construction has not commenced. This provision ensures that registered holding companies, who are relieved in subsections (f) and (g) from the general restrictions in PUHCA against them entering into the independent power business, can engage in the development as well as the ownership and operation of EWGs.

The remainder of subsection (a) provides other relevant definitions.

Subsection 15101(b)

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Subsection (b) provides that all the terms used in Title XV and defined in PUHCA shall have the same meanings as defined in PUHCA.

Subsection 15101(c)

Subsection (c) requires approval from the State commission of any State in which a facility is in retail rate base as of date of enactment. In most cases State law is likely to require such approval independently, but it is not clear that this will be true in all cases. Thus, approval is required under the legislation so as to ensure that ratepayers are not disadvantaged by a change in the status of a facility that has received financial benefits (e.g., construction work in progress (CWIP) or rate base treatment) based on the assumption of dedicated service to such ratepayers. This problem does not arise in the case of pre-existing wholesale facilities because it is clear that any change in the status of such facilities requires FERC approval under the Federal Power Act.

The Committee does not intend subsection (c) to place any undue constraints on the ability of self-generating industrial companies to sell their power at wholesale to utilities. The Committee recognizes that situations exist where a generating facility may be owned by an industrial firm which uses the energy generated from the facility exclusively in its industrial or manufacturing operations. The Committee intends State commissions to interpret subsection (c) consistent with the pro-competitive purposes of title XV to remove the constraints of PUHCA compliance on company decisions to dedicate existing generation to EWG service as economic and competitive conditions may warrant, where the facility has not actually been used to provide retail electric service to the public.

Subsection (c) provides a special rule in instances where a registered holding company wants to take an existing generating facility that was in retail rate base as of date of enactment and spin it

off to become an eligible facility owned by an EWG. In such instances, all State commissions that regulate the retail rates of the registered holding company's operating utilities would be required to give their consent for the facility in question to be an eligible facility. However, none of the otherwise applicable requirements under PUHCA for SEC approval of the transfer of generation facilities by or among affiliates of a registered holding company would apply.

Subsection 15101(d)

Subsection (d) exempts EWGs in their corporate personalities from all provisions of PUHCA. By providing that an EWG is not an "electric utility company" under PUHCA, the legislation also ensures that a company, which is not currently subject to PUHCA, cannot become subject to it by owning an EWG. This follows because the Holding Company Act only regulates "holding companies", and a holding company is defined in relevant part as a company that owns an electric utility company.

Subsection 15101(e)

For exempt holding companies, the chief obstacle to the ownership of EWGs (other than problems covered in subsections (a) through (d)) is the restrictive terms of exempt status as provided in section 3 of PUHCA. Subsection (e) simply makes it clear that section 3 and related provisions do not bar EWG ownership by exempt holding companies. The subsection does not affect any non-EWG activities by exempt holding companies and is not intended to suggest that such activities are either permissible or impermissible under PUHCA, or that the SEC may or may not properly limit such activities.

Subsection 15101(f)

Subsection (f) provides that a registered holding company may without further condition under PUHCA acquire an EWG. In the absence of this provision, the acquisition by a registered company of any securities or interest in any business would require SEC approval.

Subsection 15101(g)

Subsection (g) provides that if a registered holding company wants to: 1) issue securities (e.g., common equity) for purposes of financing an EWG; 2) guarantee the securities (e.g., debt) of an EWG; or 3) enter into service, sales, or construction contracts, or other relationships with an EWG (other than mere ownership), such actions remain subject to the SEC's existing jurisdiction under PUHCA. However, paragraphs (1) and (2) of subsection (g) make it clear that for purposes of such jurisdiction the provisions of section 11 of PUHCA are effectively negated.

Section 11 requires each registered company to be operated as an integrated system and requires all of a registered company's businesses to be "functionally related" to integrated system operation. In the absence of section 11's prohibitions and policies, any approvals required under PUHCA for the creation of relationships be-

tween a registered company and an EWG will be made under the SEC's remaining authorities.

Paragraphs (3) and (4) deal with capital structure issues raised in the case of EWGs that are owned by registered holding companies. One of the choices generally available to EWGs is the use of leveraged capital structures (i.e., those with a high proportion of debt) as a possible means of minimizing overall capital costs. Typically, non-utility generation to date has employed such leveraging. However, in the case of EWGs owned by registered holding companies the use of leveraging could conflict with the SEC's general regulatory policy of requiring registered holding companies to maintain a 65/35 percent debt-equity ratio on a consolidated basis. While an EWG itself (including one owned by registered holding company) is completely exempt from PUHCA, in the absence of further restriction the SEC could conceivably place compensating equity requirements on the jurisdictional companies of a registered holding company system in order to maintain a 65/35 percent consolidated debt-equity ratio. There appears to be little risk of this problem actually occurring. At the hearing on Title XV Commissioner Fleischman of the SEC indicated that the Commission would generally find it inappropriate to consider leveraging by EWGs in applying its 65 percent debt ratio, given that EWGs are generally project-financed on a non-recourse basis to a parent owner. See S.Hrg. 102-5 (Pt. 9).

In any case, it is the intention of the Committee that EWGs owned by registered holding companies have the opportunity to employ leveraged capital structures on comparable terms to those that are not owned by registered holding companies. In particular the Committee generally intends that EWG debt which is non-recourse with respect to a registered holding company parent or its utility affiliates not be considered by the SEC in applying the 65 percent ratio to the consolidated balance sheet.

The effect of paragraphs (3) and (4) of subsection (g) is to provide that the SEC will not consider debt leveraging by EWGs in considering whether to approve financing and other transactions by a registered holding company with respect to EWGs or with respect to matters unrelated to EWGs, unless there would be a "substantial adverse impact on the financial integrity of the registered holding company system."

Paragraph (5) requires the SEC to act upon a request for approval of the financing of an EWG by a registered holding company within 120 days of the request.

Finally, with respect to the requirement under subsection (g) for SEC approval of service, sales and construction contracts between an EWG and a registered holding company or its other affiliates, it should be noted that PUHCA has always been interpreted by the SEC to exclude regulation of electric power sales since such transactions are regulated under the Federal Power Act. Title XV, and subsection (g) in particular, assume this continuing interpretation.

Section 15102

PURPA limits ownership of QFs to persons not primarily engaged in the generation of electricity (other than by means of QFs). Under FERC's interpretation of this provision, electric utilities

may own no more than 50 percent of a QF. Section 15102 ensures that a non-utility company which acquires an exempt wholesale generator is not forced to divest itself of 50 percent of an existing QF, and is not limited in its ability to own 100 percent of a new QF, as a result of an argument that it has become primarily engaged in the generation of electricity.

Section 15103

Title XV is intended to allow EWGs to compete to serve the Nation's incremental electric demand, but not to cause non-recovery of existing capital investment in generation. Thus, section 15103 prohibits the Federal Energy Regulatory Commission (FERC) from approving a sale of EWG electric energy under the Federal Power Act if a showing is made that such sale will result in a State commission reducing recovery of capital investment in the purchaser's retail rate base by virtue of the substitution of EWG electric energy for the purchaser's own generation or that such sale will result in a State commission not permitting the purchaser of EWG electric energy to recover its capital investment in a generating facility that was under construction as of the date of enactment of the National Energy Security Act of 1991. As used in section 15103 and elsewhere in Title XV the term "electric energy" is used in the same sense as in the Federal Power Act to refer to both capacity and energy.

Section 15104

Section 15104 is intended to prevent the sale of electricity by EWGs in circumstances where the purchaser is merely a broker interposed for purposes of making possible "cherry picking"—i.e., an indirect sale to an industrial electric consumer or other desirable retail load. The section would prohibit FERC from approving a sale of EWG electric energy that is to be resold by the purchaser to a consumer unless: (1) the purchaser is a municipal electric system, a State power authority, an electric power cooperative or a public utility under State law; and (2) the purchaser would use its own transmission or distribution facilities to deliver the purchased electric energy to the consumer.

Section 15105

One of the problems raised by PUHCA reform is the possibility that EWGs will engage in sweetheart power deals with their parent utility companies or affiliates of these companies. The possibility of sales of electric energy between affiliated companies is not new; they occur frequently under present law. However, affiliate electric sales at present are generally made on a cost-of-service basis which restrains the exercise of market power. Most EWGs, on the other hand, will be formed for the purpose of selling electric energy under market rates, and this raises a greater possibility of abuse of affiliate relationships.

To date FERC has ruled in a number of cases that a seller of electric energy at wholesale is ineligible for market rates to the extent that it has an affiliate relationship with the purchaser, unless the seller makes a strong showing of having mitigated its market power. In addition, FERC has established the same princi-

ple concerning eligibility for market rates to the extent that the seller controls transmission access to the purchaser or has other means of exercising market power. At the hearing on Title XV of S. 341 both FERC and DOE testified that protection against these abuses in power contracts is legally required under the Federal Power Act. See S.Hrg. 102-5 (Pt. 9).

Under the provisions of section 15105 FERC is prohibited from approving any rate for an EWG that permits the EWG to reap an "undue advantage" from the existence of an affiliate relationship between it and the purchaser of power.

Section 15106

Section 15106 adds a new subsection (d) to section 209 of the Federal Power Act for purposes of clarifying State and Federal jurisdiction over wholesale power transactions.

Paragraph (d)(1)

Paragraph (1) of subsection (d) provides that the Federal Power Act does not limit the authority of a State commission acting in accordance with State law to review the prudence of a purchase of wholesale electric energy by a utility under such State commission's jurisdiction and, on the basis of such review, to allow or disallow the recovery of the costs of such purchase in retail rates subject to such commission's jurisdiction. This paragraph generally codifies authority presently exercised by State commissions under what has come to be known as the "Pike County doctrine." In employing the terms "prudence and imprudence" in paragraph (1) the Committee intends to reference generally the body of law under which State commissions have reviewed wholesale purchases by their native utilities. In particular, the Committee does not intend to preclude State commission review in those instances where State law does not have an explicit "prudence" standard but provides for review under an alternative to prudence such as a "used and useful" standard. In addition, to the extent that State commissions under existing law are able to place conditions on the passthrough of wholesale power costs in retail rates, nothing in paragraph (1) is intended to limit this power.

Paragraph (1) contains a proviso which requires a State commission, at the election of a utility, to make an "up front" determination of prudence or imprudence concerning a utility's proposed action with respect to an offer by an EWG to sell electric energy to such utility. Such determination must be made by the State commission in advance of the effective date of the utility's proposed action and is binding upon the State commission for purposes of the inclusion of costs in retail rates. However, in such instances the Committee does not intend a State commission to be bound concerning the inclusion of costs in retail rates with respect to matters of which it is not aware at the time of its determination (e.g., material misstatements of fact or fraud). Nor does the Committee intend to limit or prohibit a State commission from reviewing the utility's compliance with such terms or conditions that the commission may attach as a condition of determining a utility's proposed action to be prudent.

Paragraph (d)(2)

Paragraph (2) sets out an exception to the general rule allowing prudence review of wholesale purchases under paragraph (1). Paragraph (2) provides that a FERC order which accepts or establishes as just and reasonable the terms of an agreement for the purchase or interchange of electric energy among affiliates of a registered holding company shall preempt the authority of a State commission to determine the prudence of a purchase of electric energy under such agreement. For purposes of paragraph (2) and subsection (d) as a whole, the Committee intends the term "purchase" to include receipt of electric energy pursuant to an interchange agreement.

Paragraph (d)(3)

Paragraph (3) provides that the exception set out in paragraph (2) does not apply (such that paragraph (1) does apply) in the case of purchases of electric energy by an affiliate of a registered holding company from an EWG or by an affiliate of a registered holding company from a non-EWG when the economic substance of the purchase amounts to an indirect purchase from an EWG. However, paragraph (3) provides that:

. . . energy purchased by an affiliate of a registered holding company as a result of the operation of an integrated holding company shall not be deemed to be an indirect purchase of electric energy from an exempt wholesale generator.

The use of the term "energy" in this provision as opposed to the term "electric energy" used elsewhere throughout the Federal Power Act is intended to make it clear that the provision does not apply to the purchase of capacity or other means by which an affiliate of a registered holding company might indirectly pay for the cost of capital investment in an EWG. The provision is intended, however, to preclude State commission review of purchases made by affiliates of registered holding companies from non-EWGs in the course of ordinary holding company system operation under economic dispatch.

Paragraph (d)(4)

Paragraph (4) provides applicable definitions.

Section 15107

Section 15107 adds a new set of standards to the existing regulatory standards contained in section 111 of Title I of the Public Utility Regulatory Policies Act of 1978 (PURPA). Under the provisions of Title I each State regulatory authority, unless it has previously considered the matter as provided in sections 112 and 124, is required to conduct a formal proceeding to consider whether it should adopt and implement each of the standards set out in section 111. However, under Title I a State regulatory authority may completely reject a standard contained in section 111 as long as it meets the procedural requirements of the title.

The new regulatory standards set out in section 15107 are added to section 111 of PURPA as a new paragraph (8). Title I of PURPA provides various time requirements concerning the consideration of standards under section 111. For purposes of applying such requirements to the new standards added to section 111, subparagraph (B) of new paragraph (8) provides that any references in Title I to the date of enactment of PURPA shall be deemed references to the date of enactment of the National Energy Security Act of 1991.

Subparagraph (A) of new paragraph (8) sets out the substance of the regulatory standards added by section 15107. The standards are predicated upon the relevant State regulatory authority requiring or allowing electric utilities for which it has ratemaking authority to consider the purchase of long-term wholesale power supplies as a means of meeting incremental electric demand.

Under clause (i) of subparagraph (A), a State regulatory authority would perform a general evaluation of increases or decreases in utility cost of capital (and corresponding effects on retail rates) resulting from purchases of long-term wholesale power supplies in lieu of the construction of new generation.

Under clause (ii) of subparagraph (A), a State regulatory authority would perform a general evaluation of negative or positive effects on reliability that may result from purchases of long term wholesale power supplies from sellers that have capital structures which are more highly leveraged with debt than those of purchasing utilities.

Under clause (iii) of subparagraph (A), a State regulatory authority would consider whether the use by EWGs of capital structures having less than 35 percent equity threatens reliability or gives EWGs an unfair advantage over utilities.

The Committee notes that there is significant difference of opinion concerning the merits of the regulatory issues raised in clauses (i),(ii) and (iii).

Under clause (iv) of subparagraph (A), a State regulatory authority would implement procedures for the advance approval or disapproval of the purchase by a utility of a particular long term wholesale power supply which procedures reflect the results of evaluations under clauses (i), (ii) and (iii).

Under clause (v) of subparagraph (a), a State regulatory authority would not approve the purchase of a particular long term wholesale power supply by a utility unless the seller demonstrates the adequacy of its fuel supply according to the terms described in the clause.

Section 15108

Under this section an EWG is generally required to make available to affected State commissions (as defined in subsection (b)) its own books and records, all contracts to which it is a party relating to the financing, construction, or operation of eligible facilities, and other records and information relevant to the exercise of an affected State commission's authority. However, nothing in section 15108 requires an EWG to supply the records or information of any party other than itself. Thus, under this section an EWG has no obligation to provide records or information of its corporate parent, although it may be required to provide contracts with its parent to

which it is a party. In addition, an EWG's trade secrets and sensitive commercial information are exempt from disclosure to the public or potential competitors of the EWG, and an EWG is not required to provide such information to an affected State commission unless the commission has procedures for protecting the confidentiality of such information.

The principal purpose of section 15108 is to prevent cross-subsidies by captive ratepayers of a utility in favor of an affiliate EWG or an EWG that is an affiliate of the utility's exempt holding company parent. By requiring the disclosure of relevant information, affected State commissions are made aware of possible abuses, and the likelihood of cross-subsidy is reduced. In addition, section 15108 ensures that a State commission will be able to assess the financial stability and reliability of an EWG that proposes to sell electric energy to a utility that the commission regulates.

Nothing in section 15108 preempts otherwise applicable State law concerning the provision of records and other information.

The Committee does not intend section 15108 to create an opportunity or incentive for State commissions to examine EWG books and records for the purposes of regulating their profits. First, such matters are entirely within the purview of FERC under the Federal Power Act. Second, the large purpose of Title XV is to allow competition in wholesale power markets to go forward.

Title XVI—Strategic petroleum reserve

Subsection 16101(a)

This subsection amends title I of the Energy Policy and Conservation Act (EPCA) by adding a new part D to provide for additional oil security protection. New section 181 of EPCA states the short title for the part. New section 182 sets forth that the purposes of the part are to complete, at the earliest possible date, storage of 750 million barrels of petroleum products and to establish a 1 billion barrel reserve. In addition, a purpose is to establish a 10 million barrel Defense Petroleum Inventory.

New section 183 of EPCA provides that the President is to initiate such actions as are necessary to complete storage of 750 million barrels of petroleum products in the Strategic Petroleum Reserve (SPR) at the earliest practicable time.

New section 184 of EPCA directs the President to initiate such actions as are necessary to enlarge the SPR to one billion barrels as rapidly as possible. The remainder of the section is self-explanatory.

New subsection 185(a) of EPCA provides that the President, acting through the Secretary of Energy, may acquire by purchase, exchange, or other arrangement, from one or more foreign governments, without the necessity for competitive procurement, petroleum products for storage in the SPR or the Defense Petroleum Inventory, and may contract, without regard to certain specified provisions of law, for storage in the SPR or the Defense Petroleum Inventory of petroleum products owned by one or more foreign governments.

New subsection 185(b) of EPCA addresses the utilization of available funds for the conduct of SPR program activities including ex-

isting funds in the SPR (Petroleum Reserve) account which were derived from the 1990 SPR test sale.

New subsection 185(c) of EPCA defines the term "foreign government" for purposes of the part.

Subsection 16101(b)

This subsection amends title I of EPCA to add a new section 168 pertaining to the Defense Petroleum Inventory. New subsection 168(a) of EPCA provides that the Secretary may acquire or construct, operate and maintain storage and facilities associated with a Defense Petroleum Inventory of at least ten million barrels of crude oil to meet petroleum product requirements of the Department of Defense, and may utilize available funds to acquire and store crude oil therein.

New subsection 168(b) of EPCA states that the acquisition and storage of crude oil in the Defense Petroleum Inventory is in addition to any such acquisition for the SPR required by any other law, and crude oil acquired and stored under this section shall not be counted as part of the SPR but may be stored in SPR facilities. The subsection also sets forth Secretarial authority.

New subsection 168(c) of EPCA provides that upon the request of the Secretary of Defense, crude oil acquired for or dedicated to the Defense Petroleum Inventory shall be drawn down and distributed by the Secretary to, or on behalf of the Department of Defense for use, sale, or exchange. The remaining provisions of the subsection are self-explanatory.

New subsection 168(d) of EPCA provides that upon the request of the Secretary of Defense, and subject to the availability of funds from the Department of Defense, the Secretary shall acquire and store in the Defense Petroleum Inventory crude oil to replace crude oil drawn down at the request of the Secretary of Defense under subsection 168(c).

New subsection 168(e) of EPCA provides that an amendment to the SPR Plan regarding the exercise of authority relating to the Defense Petroleum Inventory is not required.

New subsection 168(f) of EPCA provides that the Department of Defense shall provide reimbursement to the Secretary of Energy as set forth in the subsection for the costs of creation of the Defense Petroleum Inventory and for the drawdown and replacement of crude oil for the Defense Petroleum Inventory.

New subsection 168(g) of EPCA provides that crude oil acquired for the Defense Petroleum Inventory under subsection (a) shall be transferred to the SPR in reimbursement on a barrel-for-barrel basis for the cost of replacement petroleum products acquired for the SPR.

Subsection 16101(c)

This subsection makes conforming amendments to the table of contents of EPCA.

COST AND BUDGETARY CONSIDERATIONS

An estimate of the cost of this measure has been requested from the Congressional Budget Office. This estimate had not been re-

ceived at the time the report on this legislation was filed. When the estimate becomes available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out this legislation. The Committee expects several titles of the bill, such as Title IV, Subtitle C. (Hydropower), Title IX (Nuclear Reactor Licensing), Title XI (Natural Gas), and Title XV (Public Utility Holding Company Act Reform) to improve and streamline regulatory processes.

No personal information would be collected in administering the programs under the bill. Therefore, there would be no impact of personal privacy.

Little additional paperwork would result from the enactment of this measure, as reported.

EXECUTIVE COMMUNICATIONS

On February 11, the Committee on Energy and Natural Resources requested legislative reports from the Department of Energy and the Department of the Interior; on February 21, the Federal Energy and Regulatory Commission, and the Department of Transportation; and on March 25, the Department of Defense and the Office of Management and Budget, setting forth executive views on this legislation. The views of the Department of Defense were received on April 24, 1991. A copy of this communication is included below. The remainder of these reports had not been received at the time the report on this legislation was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the State. In addition, the Committee received views of the Administration on the legislation during the hearings conducted on the measure.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, DC, April 24, 1991.

Hon. J. BENNETT JOHNSTON,
Chairman, Senate Committee on Energy and Natural Resources,
Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request of March 26, 1991 for the views of the Secretary of Defense on Title VII, S. 341, 102nd Congress, a bill "To reduce the Nation's dependence on imported oil to provide for the energy security of the Nation and for other purposes."

We are pleased to provide the Department of Defense comments below on Title VII, and would like to take this opportunity to comment on Title III of the bill, as well. The National Defense Authorization Act for Fiscal Year 1991 established energy conservation guidelines for the Department of Defense. Title III, Subtitle B, of S. 341, applies similar provisions to all agencies. Our main concern with Subtitle B is the requirement to install not later than January 1, 2000, ". . . all energy conservation measures with payback

periods of less than ten years. . . ." We estimate that this goal could cost \$2 billion, eight times the amount that is affordable through FY 1997. We prefer the approach in Executive Order 12759, Federal Energy Management," April 17, 1991, which is consistent with the Fiscal Year 1991 Defense Authorization Act and allows Agencies to set goals and prescribe the means to achieve them.

Title VII, S. 341, would require oil importers to provide at least 220,000 barrels per day of crude oil for the Strategic Petroleum Reserve and petroleum products to meet the Defense Department's demand (currently approximately 475,000 barrels per day). We understand the Committee's concern for energy security, but we are opposed to this proposal. The Defense provision appears impossible to implement without hurting the petroleum market and our source selection flexibility, and would raise the cost of oil and oil substitutes in the U.S. It would impose increased costs on a broad segment of the economy that relies heavily on petroleum products for transportation, heating and raw materials for petrochemicals and other products. This would increase costs to defense as well as have other adverse economic impacts nationally.

We urge the Committee to adopt the Administration's proposal, S. 570, Title III, Subtitle B, to lease the Naval Petroleum Reserve No. 1 and create a Defense Petroleum Inventory (DPI), which can be drawn down at rates and for periods of time requested by the Department. Leasing Elk Hills and using part of the proceeds to create a Defense-controlled DPI is a practical, sensible approach we strongly endorse.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to submission of this report for the consideration of the Committee.

Sincerely,

TERRENCE O'DONNELL.

ADDITIONAL VIEWS OF SENATOR JOHNSTON

Two weeks ago the Senate Committee on Energy and Natural Resources took an important first step in the process of developing a balanced and comprehensive national energy policy with the adoption of this measure the National Energy Security Act of 1991, by a 17-3 vote.

The legislation I introduced with the ranking minority member of the Committee represents the most sweeping package of energy initiatives ever to be approved by a committee of Congress.

While I am encouraged by the Committee's action and by the spirit of cooperation and compromise Members displayed throughout the lengthy markup process, I regret that we could not find common ground on one of the most critical elements of the bill—increasing the corporate average fuel economy (CAFE) standards from the current requirement of 27.5 miles per gallon.

As introduced and passed by the Committee, the bill mandates that the Department of Transportation issue new mile-per-gallon standards for automobiles and light trucks for model years 1996 and 2001. These standards, in turn, are to be derived from the criteria set forth in the bill: that all applicable safety and emission standards would be met; that 1990 fleet size mix and performance would be preserved; and that the maximum practical achievable technology would be utilized.

During consideration of the bill, many Senators expressed dissatisfaction with this approach. They believed that the mile-per-gallon standards themselves should be included in the bill.

Accordingly, I directed the staff of the Committee to undertake the technical assessment that the bill had required the DOT to perform in order to produce recommendations for specific mileage standards. (A description of the methodology and assumptions used by the staff is contained in the Appendices attached to these views.) The staff carried out this task in consultation with the Office of Technology Assessment and its contractor, Mr. K.G. Duleep, arguably the nation's foremost expert in this area.

This task is part subjective and part objective.

The subjective part—performed by Committee staff—is to make the numerous judgements about the degree of penetration into the fleet of various automobile fuel efficiency technologies. For 1996 and 2001, virtually all the technologies that could be used are known. The question is to what extent they will be used. For each technology, that depends not only on the automobile companies' initial evaluation of its utility, but also on their success in deploying the technology and on the economics of the new car market as the companies perceive it.

The objective part of the evaluation is to run these assumptions through Mr. Duleep's model, which produces the final numbers. All

of the assumptions made by the Committee staff are explicit and available for review.

The assessment yielded the following standards for the automobile fleet as a whole: 30.2 miles per gallon in 1996; 34.0 miles per gallon in 2001; and 37.0 miles per gallon in 2006. I offered these numbers in an amendment during the Committee's markup of S. 341, but the amendment failed. (The text of the amendment I offered is also attached to these views as Appendix V.C.)

Some on the Committee viewed these standards as too stringent. These Members suggested that Detroit might not be capable of meeting the standards without losing an even greater portion of the market to imports, forcing the layoff of thousands of workers and causing tremendous economic dislocation.

Others argued that much tougher standards should be written into law. However, standards that are too stringent carry significant risks. The automobile companies could be forced to eliminate or shorten the lives of models in which billions of dollars have been invested. The full product cycle for a model is 13 years: 5 years for development and 8 years of product life. Inflicting intentional losses on companies that have lost \$4.7 billion in the last two quarters hardly seems prudent.

Any of these fleet standards—those in the bill introduced by Senator Bryan (S. 279), my numbers, or others—assume that the market share of the domestic companies remains the same. If Federal CAFE standards require fleet size mix and performance characteristics that the public doesn't want, the public will simply buy the larger, more powerful cars. The result would be further loss of market share to foreign brands.

Is higher mile-per-gallon performance technically feasible today? Yes, if we decrease size and performance.

In Europe, American automobile companies achieve fleet averages today that are about 5 miles per gallon above their CAFE in the United States. But this higher mileage is achieved because the European fleet is 1000 pounds lighter; is 95% powered by 4-cylinder engines; is 90% equipped with manual transmission; and has less than 3% air conditioning. In Europe, of course, gasoline costs 3 to 4 times as much as in the United States.

However, if we allow an appropriate lead time to permit introduction of fuel-saving technology, Detroit can substantially raise the domestic fleet's CAFE, while maintaining the size mix, performance and other features the public demands. This is the point of the analysis the Committee staff prepared.

The challenge in this legislation can be stated as follows: We need to stretch Detroit to the technological limits in miles per gallon, consistent with the preservation of American jobs, maintaining American market share and profitable survival of the automobile companies.

I believe that my amendment accomplishes that.

APPENDICES

These appendices cover a broad range of topics. They are organized as follows:

I. General principles.

II. Summary of key parts of the Committee hearing record on CAFE standards.

III. Overview of the Johnston CAFE proposal.

IV. Detailed derivation of Johnston CAFE standards.

V. Supplemental Documents.

I. GENERAL PRINCIPLES

A. Technical Analysis

CAFE standards must be based on sound technical analysis of fuel economy potential. Congress cannot simply pick ambitious numbers for CAFE standards and assume that the automobile industry will somehow respond. This is an industry that employs thousands of Americans. Domestic automobile manufacturers face intense international competition and are currently experiencing steep losses—\$4.7 billion dollars in the last two quarters.

Sound technical analysis requires a careful examination of a number of factors, including technologies, costs and market penetration rates. The CAFE standards in the amendment I offered in Committee were based on the fuel economy analysis presented to the Committee by Steven E. Plotkin of the Office of Technology Assessment (OTA) and K.G. Duleep of Energy and Environment Analysis, Inc. (a contractor to OTA and the Department of Energy). These standards do not represent a bargaining position adopted with the expectation of future negotiation with persons or groups proposing other CAFE numbers. I am willing to meet with anyone to refine the staff analysis, or consider other analyses. However, it makes little sense to negotiate over numbers that have little or no technical basis.

B. Economic Practicality

Congress must consider economic practicality in setting new CAFE standards. Economic practicality does not require that market forces be the sole determinant of fuel economy. An important reason why Congress finds itself wrestling with the CAFE issue is that the real cost of gasoline to society is greater than what an individual pays at the pump. However, CAFE standards cannot be based exclusively on technological feasibility. To achieve increased savings, the fuel-efficient automobiles must be purchased by the public. Consumer acceptance of the new technologies and any accompanying price increases for automobiles must be taken into account.

The goal of Congress should be to stretch the automobile companies to the technological maximum, consistent with consumer acceptance. We should aim for the highest CAFE standards we can get without losing American jobs, reducing American market share, or hurting our economy.

Economic practicality requires recognition that the domestic automobile industry has 5-year lead times for the development of new models, and that 8 years is the typical life of a new model. This aspect of practicality affects the speed at which one can move toward a particular CAFE standard.

Uncertainty over oil prices makes it difficult to predict what consumers will accept in the future. This fact does not remove the ra-

tionale for CAFE standards. However, it does require that careful thought should be given to means of adjusting CAFE standards that take effect ten to fifteen years in the future to allow for the possibility of sharp changes in consumer behavior in response to changes in oil prices. Adjustments may also be necessary in response to technological developments and changes in emissions or safety standards.

Finally, Congress must recognize that CAFE standards alone cannot bear the burden of reducing oil dependence in the transportation sector. Beyond some point, CAFE standards can bring counterproductive and perverse results.

CAFE regulation is not command-and-control regulation. If government orders an electric utility to install a scrubber, it can be fairly certain of the outcome. Emissions go down; costs go up; rates go up; but the customer stays. The automobile industry is quite different. Customers and companies can behave in unanticipated ways. In 1975, who predicted—

the rapid growth in vehicle-miles-traveled?

the growth in market share of foreign automobile makers?

the substantial market shift from automobiles to light trucks?

the movement of some large car production outside the United States?

that increasing numbers of older automobiles would still be on the road?

All of these events have been plausibly linked, in part, to the 1975 CAFE standards. Congress must carefully consider the intended, as well as possible unintended, consequences of CAFE legislation.

II. THE COMMITTEE HEARING RECORD ON CAFE STANDARDS

A. Terminology

Central to the hearing record established by the Committee is the testimony of Mr. Plotkin and Mr. Duleep. There are three technical terms that must be understood in order to properly interpret their fuel economy analysis. The terms involve the group of fuel-saving technologies examined and the degree of market penetration by those technologies in some future year.

(1) "*Current Technologies*" are those technologies that are currently used in at least one line of cars. The present market penetration of current technologies can be extremely low. Current technologies range from familiar ones (e.g., front-wheel drive, which can further penetrate the market) to exotic ones (e.g., advanced transmissions that currently have achieved only a tiny market penetration).

(2) "*Product Plan Scenario*", for 1996, reflects what companies are actually planning to do in terms of models and technologies. For 2001, the product plan is more hypothetical: current technologies are assumed to achieve increased penetration levels that are cost-effective from the consumer's perspective. The cost-effectiveness test requires an assumption about oil prices.

(3) "*Maximum Technology Scenario*" for 2001 assumes that current technologies achieve 100% penetration in their applicable

markets, regardless of any disruption of normal product cycles, increased costs to consumers, or risk of consumer rejection.

B. Major Concerns

Several key conclusions emerge from the hearing record on CAFE standards:

(1) The CAFE standards in S. 279 are unrealistic

The hearing record of the Committee clearly demonstrates that the CAFE standards in the S. 279 are unrealistic. The 1996 standard for automobiles under S. 279 is 34 MPG. (Here "standard" is the fleetwide minimum CAFE level required by the bill.) This exceeds by 3 or more miles per gallon (MPG) what OTA says would be a realistic goal to set for that year.¹ The 2001 standard for automobiles is 40 MPG under S. 279. This exceeds the OTA's maximum technology scenario for that year. The OTA maximum technology scenario is 2-3 MPG less than the standard of S. 279, depending on whether one assumes that the automobile fleet maintains 1990 size and performance levels, or whether one assumes a rollback to 1987 levels.² Furthermore, the maximum technology scenario itself is an unrealistic standard for 2001 (see below).

The S. 279 CAFE standards for trucks are equally unrealistic. The 1996 standards for domestic trucks is 24.7 MPG. This greatly exceeds the 1996 product plan for domestic light trucks of 21.2 MPG. Product plans are very costly to change with less than 5 years lead time. The 2001 standard for domestic trucks is 28.8 MPG in S. 279. This exceeds Mr. Duleep's maximum technology scenario for that year (26.0 MPG), which, in itself, would be an unrealistic standard. Finally, Mr. Duleep informed the Committee that, to his knowledge, there is no analysis available of fuel economy potential in the imported light truck fleet.³

Supporters of S. 279 attempt to justify their CAFE standards by citing various studies of fuel economy. The problem is that most of these studies are based on outdated analysis. Supporters of S. 279 have cited nine different studies to support the notion that 20% and 40% increases in MPG are feasible. However:

(a) Six of the nine sources are based on analysis performed by Mr. Duleep in 1989—estimates that he has since revised.

(b) One source is based on analysis performed by Mr. Duleep in 1990—estimates that he has also revised.

(c) One source is an Environmental Protection Agency study that estimates the average MPG of a hypothetical new automobile fleet made up solely of actual automobiles with the highest MPG in each size class. This study does not hold size and performance constant within a size class, nor does it account for the lead times necessary if companies were to redesign all

¹ National Energy Security Act of 1991 (Subtitle A of Title XI), Hearings before the Committee on Energy and Natural Resources, 102nd Congress, 1st Session, February 28 and March 20, 1991 (S. Hrg. 102-5 [Pt. 4]), p. 173 (hereafter referred to as "Hearings"). OTA testified that 30.2 MPG is realistic, not accounting for alternative fuel credits; and that 31 MPG might be possible with such credits. In Appendix IV, J, I argue that such credits should not be "layered on" to what technical analysis indicates is a realistic CAFE standard.

² Hearings, op. cit., p. 177.

³ Hearings, op. cit., pp. 197-198. See also K.G. Duleep, letter to Sen. Johnston in response to questions for hearing record, May 7, 1991, p. 2 (hereafter referred to as "Duleep response").

their automobiles to mimic the highest MPG automobile in each size class.

(d) The final source is a largely undocumented opinion survey of what automotive supply companies believe is achievable.

It is no surprise that Mr. Duleep's estimates of fuel economy potential have decreased since 1989 and 1990. First, as the lead time until 1996 and 2001 gets shorter and shorter, fewer and fewer changes are possible. In addition, new emission and safety standards have been established since 1989 that further reduce fuel economy potential.

(2) A CAFE standard for 2001 based on a "maximum technology" scenario is unrealistic and unwise

Supporters of sharply higher CAFE standards often cite the fuel economy potential under Mr. Duleep's maximum technology scenario as indicating that 40 MPG in 2001 is a practical, achievable standard. This ignores important caveats Mr. Duleep has placed on his analysis:

The maximum technology scenario considered in this analysis is, indeed, a real maximum. . . The scenario envisages that *all products are redesigned* employing new materials such as aluminum and advanced plastics extensively, and that the only engines sold are multi-valve small displacement engines with intake valve control in virtually all but the smallest cars. *The extent of such changes would impose a heavy burden of retooling for the industry and would require unprecedented and risky changes to every product sold.* These factors should be understood when considering the maximum technology scenario results.⁴

These caveats were echoed by Mr. Plotkin and Mr. Duleep during the Committee's hearings.⁵

(3) Lead times longer than 10 years are necessary in order to achieve the "maximum technology" scenario without disrupting the automobile industry, and to allow new technologies to penetrate the market to a significant degree

OTA's testimony highlights the importance of lead time:

The selection of an appropriate target date for a maximum technology scenario involves a tradeoff of the risks and costs associated with accelerated design schedules and lessened product lifetimes and the benefits of moving the fleet more rapidly towards higher fuel economy. For policymakers who are somewhat risk averse, given the current domestic company cycle of 8 year model life and 5 year lead time, and the closeness of the 1992 model year, the 2005 model year might seem a good choice for a target date. A model year 2005 target date would lessen risks to

⁴K.G. Duleep, Energy and Environmental Analysis, Inc., "An Assessment of Potential Passenger Car Fuel Economy Objectives for 2010", Draft Report Prepared for EPA, June 1990, pp. 2-11 to 2-12, *emphasis added*.

⁵Hearings, op. cit., p. 182, 187.

domestic automakers and avoid the costs of prematurely introducing technology across all models on an accelerated schedule.⁶

When it comes to American jobs, Congress should be a risk-averse policymaker. Congress should be willing to raise CAFE standards at a gradual and responsible speed, but ought to oppose any CAFE standard certain to wreak financial havoc on the industry.

Some would argue that these concerns are unfounded; that new technology will come to the rescue; and that all things are possible by 2001. Again, this argument ignores the realities of the automobile manufacturing industry. Here is how Mr. Plotkin summarized the potential for new technologies by 2001:

The problem with getting a lot of fuel economy gains in a short period of time with these [new] technologies is that normally, the way you introduce a new technology into the fleet is to introduce it only into one or two models and then let it be in the fleet for 2 or 3 years, at least, to work all the bugs out, because just the testing itself still leaves a very substantial amount of risk. . . . By the time you have factored all these lead times into effect, the year 2001 or 2002 probably does not give you a lot of potential for new fuel economy.⁷

(4) The relation of CAFE standards to automobile safety is complex. Both advocates and opponents of higher CAFE standards oversimplify the safety issue

Some CAFE advocates argue that the weight of an automobile is unrelated to safety. Some CAFE opponents argue that any decrease in the weight of automobiles would result in more deaths and injuries. Both are wrong. The safety of automobiles is a complex function of size, weight, materials strength, and design. It is also a function of the characteristics of other automobiles on the road.

There is little doubt that if new CAFE standards required automobile manufacturers to simply remove 1000 pounds of steel from the average automobile or sell far more small automobiles, then safety would suffer. Any such standards should be opposed.

The CAFE standards in my amendment are attainable without decreasing automobile safety. By their construction, these standards can be achieved with no reduction in size. According to Mr. Duleep, the standards for 2006 could be met with a reduction in the weight of the average automobile of about 300 pounds.⁸ However, this could be achieved largely by a substitution of strong, lightweight materials for steel, not by merely taking 300 pounds of steel out of the automobile.

III. OVERVIEW OF JOHNSTON CAFE PROPOSAL

This section gives an overview of my proposal (the text of which is set forth in Appendix V.C) and is organized as follows:

A. General Principles.

⁶Hearings, op. cit., p. 183.

⁷Hearings, op. cit., p. 216.

⁸Duleep response, op. cit., Table 1.

- B. CAFE Standards for Automobiles.
- C. CAFE Standards for Light Trucks.
- D. Comparison with the Committee Bill.

A. General Principles

My proposal for CAFE standards incorporates what the Committee learned through the hearing process. This proposal reflects the five criteria for establishing the "maximum feasible average fuel economy" as set forth in the Committee bill: technology, size, performance, emissions, and safety.

The technical analysis underlying my proposal assumes that automobiles maintain 1990 size and performance levels. It also assumes that automobiles meet applicable emission and safety requirements. The analysis assumes that Tier I emission standards will apply in future years.

My CAFE amendment would modify the technology criterion in the Committee bill in order to emphasize practicality. The amendment directs the Secretary to assume use of the maximum practical achievable fuel-saving technology. The aim is to be certain that the Secretary considers the lead times necessary for the introduction and penetration of technologies.

As the Committee learned in its hearings, 100% market penetration of fuel-saving technology by the year 2001 is not a realistic goal. It would require automobile manufacturers to shorten the life of some models and absorb substantial financial losses. Furthermore, by sharply accelerating the time in which new technologies are introduced, perfected, and deployed, automobile manufacturers and their customers would be taking the risk that the technology might not perform as intended and that durability and maintainability might suffer. My proposal for CAFE standards in 2001 assumes substantial progress toward full market penetration.

My proposal includes a third tier of CAFE standards beginning in the year 2006, which gives automobile manufacturers a 15-year lead time to achieve nearly full penetration of fuel-saving technologies. There is a significant difference between a 10 years and 15 years. The full product cycle is 13 years: 5 years of development and 8 years of product life. With 15 years of lead time, automobile manufacturers will redesign every product in the normal course of business. Costly and risky accelerations of product redesign would be unnecessary.

The technology criterion requires consideration of technologies capable of being commercialized. My proposal assumes the commercialization of the most promising fuel-saving technology: the two-stroke engine. It is assumed to achieve substantial market penetration by 2006 (30 to 40 percent). Naturally, commercialization would begin earlier but it would have only a small effect on the fuel economy potential for 2001.

The CAFE standards in my proposal are summarized below. A detailed derivation follows in a later section. The CAFE standards for 2001 and 2006 are based on fuel economy scenarios developed by Committee staff. In questions for the hearing record, I asked Mr. Duleep to run these scenarios in his computer model of fuel economy. Mr. Duleep does not endorse these scenarios in any way,

nor does he take a position on whether fuel economy regulations are appropriate or desirable.

B. CAFE Standards for Automobiles

According to OTA, the product plans of automobile manufacturers will lead to fleetwide CAFE for automobiles of 29.2 MPG in 1996. Because of the short lead time involved, companies cannot improve fuel economy much beyond their product plans. OTA feels that automobile manufacturers can achieve about one MPG more with higher penetration rates for technologies such as advanced fuel injection and overhead cam engines.⁹ Therefore, my proposal would set a fleetwide CAFE standard of 30.2 MPG for 1996. The percentage increase for all firms would be 7.5% over the 1990 base year.

The CAFE standard for 2001 is 34.0 MPG (a percentage increase of 20.9% over the 1990 base year). It is based on a scenario developed by staff through discussions with Mr. Duleep. The scenario assumes substantially greater penetration of fuel-saving technologies beyond the levels in 1996. It also assumes that the upward trend in size and performance in the 1996 product plans is reversed, and that size and performance levels return to 1990 levels.

The degree of higher market penetration depends on the technology. Examples for the domestic fleet are: improved lubrication and tires achieve 100% penetration; the use of front-wheel drive increases from 86% of domestic cars (1996) to 91% (2001); advanced transmissions (5-speed automatic and continuously variable transmissions) penetrate roughly half of the relevant market (i.e., automatic transmissions). This scenario also envisions an increase in four-valve engines along with some weight and drag reduction.

The CAFE standard for 2006 is 37.0 MPG. It also is based on a scenario developed by staff through discussions with Mr. Duleep. The scenario assumes: (1) nearly full market penetration of fuel-saving technologies, (2) substantial penetration by the two-stroke engine, and (3) maintenance of 1990 size and performance levels.

In the 2006 scenario for domestic cars, the use of front-wheel drive increases from 91% of domestic cars (2001) to 99% (2006). Advanced transmissions (5-speed automatic and continuously variable transmissions) penetrate nearly all of the relevant market. The two-stroke engine penetrates about 30% of the market. Additional weight and drag reduction is achieved.

Although the fuel economy of the fleet as a whole is 38.1 MPG under this scenario, the uniform percentage increase design for CAFE standards cannot achieve this goal without pushing the import fleet beyond its fuel economy potential. This problem arises because the fuel economy potential of the import fleet (on a percentage basis) is lower than that of the domestic fleet. When the two are averaged, a uniform percentage increase would drive imports beyond levels that can be achieved without downsizing and reducing performance, while leaving domestics somewhat under their potential.

⁹Hearings, pp. 170-173.

To avoid violating the criteria in the Committee bill, the percentage increase is capped at the level the import fleet can achieve. The resulting fleetwide CAFE is 37.0 MPG (a 31.8% increase over the 1990 base year).

C. Safe Standards for Light Trucks

Light truck standards are often overlooked in the CAFE debate, even though trucks account for 30% of all vehicle sales. Two factors should be considered in setting new CAFE standards for light trucks. First, Mr. Duleep has analyzed the domestic truck fleet, but this analysis has not received the same scrutiny and peer review as his analysis of the automobile fleet. Second, as noted earlier, there is no analysis available for imported trucks. (Somewhat balancing this is the fact that domestic trucks made up over 80% of the total truck fleet in 1990.)

Notwithstanding these factors, the CAFE standards in my proposal aim for consistency with the criteria in the Committee bill.

The opportunities for improving light truck fuel economy by 1996 are very limited. Mr. Duleep estimates that the current product plans of domestic truck manufacturers would result in a CAFE of 21.2 MPG by 1996. A realistic domestic truck CAFE standard for that year would be slightly above this at 21.5 MPG. This would represent a 5.9% increase over the 1990 base year CAFE of 20.3 MPG. Applied to the combined domestic and import truck fleet, this percentage increase would result in a 1996 CAFE of 22.0 MPG (up from a 1990 CAFE of 20.8 MPG).

The maximum technology scenario for domestic light trucks projects a CAFE of 26.0 MPG. This scenario assumes 100% penetration of fuel-saving technologies. To adopt this scenario for the domestic truck CAFE standard for 2001 would be costly, risky, and potentially disruptive of the industry.

By 2001, truck manufacturers could make partial progress toward the maximum technology scenario. A realistic CAFE standard for 2001 would be 23.5 MPG. This would require substantial movement toward the maximum technology level of 26.0 MPG. A domestic truck CAFE of 23.5 MPG would represent a 15.8% increase over the 1990 base year. Applied to the combined domestic and import truck fleet, this percentage increase would result in a 2001 CAFE level of 24.0 MPG.

The scenario for 2006 envisions fuel-saving technologies achieving close to 100% market penetration. By 2006, truck manufacturers will have redesigned all their products in the normal cycle of business, thus nearly full market penetrations are practical.

A domestic truck CAFE of 26.0 MPG would represent a 28.0% increase over the 1990 year. Applied to the combined domestic and import truck fleet, this percentage increase would result in a 2006 level of 26.6 MPG.

D. Comparison with the Committee Bill

The principal differences between my proposal and Title III of the Committee bill are as follows:

(1) Limitations on the Secretary's discretion to set standards

My proposal would significantly limit the discretion the Secretary of Transportation would have to set CAFE standards for individual manufacturers for model years 1996 and thereafter. Under current law, it should be remembered, uniform CAFE standards were set in the statute for all manufacturers for model years 1978, 1979, 1980, and 1985 and thereafter, but the Secretary was given discretion to set the standards for model years 1981, 1982, 1983, and 1984 at whatever level he determined both would be the "maximum feasible" level and would result in "steady progress toward meeting" the statutory model year 1985 standard. The Committee bill gives the Secretary discretion to set standards for model year 1996 and thereafter that is similar to what he exercised for model years 1981-1984, namely, the Secretary must set CAFE standards at the "maximum feasible" level. Unlike current law, however, the Committee bill significantly limits the Secretary's discretion by more narrowly defining the factors the Secretary must consider in determining what constitutes the "maximum feasible" level.

My proposal would further limit the Secretary's discretion in two significant ways. First, it would set a minimum uniform percentage increase (one for automobiles and one for light trucks) each automobile maker must meet. These minimum requirements are discussed under sections III.A and B above.

Second, my proposal would set "floors and ceilings" below and above which the Secretary could not set an individual automobile manufacturer's CAFE standard. Under the Committee bill, it is possible that the uniform percentage increase, when applied to an automobile manufacturer with particularly poor fuel economy today, could result in a relatively low CAFE requirement. The "floors" in my proposal will ensure that even companies with the poorest fuel economy today will be held to reasonable minimum fuel economy requirements. Conversely, under the Committee bill, it is possible that the uniform percentage increase, when applied to an automobile manufacturer with exceptionally high fuel economy today, could result in an unreasonably high CAFE requirement. The "ceilings" in my proposal are intended to ensure that the companies that have the highest fuel economy today are not unfairly punished by unrealistic CAFE standards.

(2) Addition of a third tier

The Committee bill requires the Secretary to prescribe CAFE standards for two periods: model years 1996 through 2001; and model year 2002 and thereafter. My proposal would change this to three periods: model years 1996 through 2000; model years 2001 through 2005; and model year 2006 and thereafter. The change is intended to make it possible for the Secretary to establish higher CAFE standards. As previously discussed, the testimony received by the Committee during consideration of the legislation clearly established that dramatic increases in fuel economy by model year 1996 or even 2002 simply are not technologically or economically achievable. By adding a third tier beginning in model year 2006, for which automobile manufacturers will have more lead time, more substantial increases in fuel economy will be possible.

(3) Milestone reviews

Congress cannot legislate clairvoyance on the part of the Secretary of Transportation. A CAFE standard that the Secretary sets in 1994 for model year 2006 may prove too ambitious because assumptions about technological developments turn out to have been overly optimistic, or it may prove not ambitious enough because assumptions about technological developments turn out to have been overly optimistic, or it may prove not ambitious enough because the Secretary failed to foresee a major technological development.

Accordingly, my proposal requires the Secretary to review the standards for model years 2001 through 2006 five years before they take effect and the standards for model year 2006 and thereafter both five and ten years before they take effect. This gives the Secretary an opportunity to adjust the standards to reflect technological developments closer to the standards' implementation and yet early enough to give the automobile manufacturers time to incorporate any such developments in future models.

The Secretary's discretion to reduce CAFE standards pursuant to these milestone reviews is limited. The Secretary could reduce the average fuel economy of either manufacturers or trucks by no more than two miles per gallon for model years 2001 through 2005 and no more than three miles per gallon for model year 2006 and thereafter. In addition, though there is not a formal milestone review for model years 1996 through 2000 because of its proximity, the Secretary could reduce the average fuel economy of manufacturers and trucks by up to one mile per gallon for that period. Conversely, there is no limitation on how high the Secretary can raise CAFE standards during a milestone review other than the restriction that any CAFE standard reflect the "maximum feasible" fuel economy the automobile manufacturers can achieve.

(4) Clarification of "maximum feasible average fuel economy"

Current law provides that in determining the "maximum feasible average fuel economy," the Secretary is to consider: (1) technological feasibility; (2) economic practicability; (3) the effect of other Federal motor vehicle standards on fuel economy; and (4) the need of the Nation to conserve energy. The Committee bill retains these criteria only for CAFE standards set before model year 1996. Beginning with that model year, the Committee bill requires the Secretary to use a similar but separate set of criteria. The relationship of these two sets of criteria to each another has caused some confusion.

My proposal retains the criteria in existing law even after 1996 and adds the concept of "maximum practical achievable" fuel-saving technology. For purposes of determining "maximum feasible" average *fuel economy*, the Secretary is directed to assume that the automobile manufacturers will use "maximum practical achievable" fuel-saving *technology*. Maximum practical achievable fuel-saving technology is then defined in terms of the criteria used in the Committee bill with some modifications for clarity.

(5) Credit trading

Under current law, automobile manufacturers whose fuel economy is better than required by the applicable CAFE standard are awarded credits. These credits can be used to offset the automobile manufacturer's failure to meet applicable standards in prior or subsequent years—for up to three years before or three years after the year the credit is earned. The Committee bill expands this credit program by allowing automobile manufacturers to trade credits. An automobile manufacturer that earns credits could sell them to an automobile manufacturer that fails to meet its assigned CAFE level. In addition, the Committee bill permits the use of credits earned for model year 1996 and thereafter indefinitely instead of for just three years.

On this issue, my proposal differs from the Committee bill in two important respects. First, it would extend from three to five years the time an automobile manufacturer has to "pay back" credits borrowed to meet CAFE standards in one year in anticipation of exceeding CAFE standards in a later year. Second, it would forbid automobile manufacturers from using credits earned on vehicles produced abroad to meet CAFE requirements applicable to vehicles produced domestically. This provision is intended to prevent automobile manufacturers from using the credit system to increase the fuel efficiency of automobiles made overseas while neglecting the fuel efficiency of automobiles made in this country.

(6) Flexibility to avoid anticompetitive results

The purpose of CAFE legislation should be to increase the fuel economy of the nation's automobile and truck fleet as a whole, not to favor or disadvantage individual automobile manufacturers. The uniform percentage increase approach to CAFE taken by S. 279, the Committee bill, and my amendment runs the risk of causing anti-competitive results, however, by requiring some automobile manufacturers to achieve greater increases in fuel economy than others.

My proposal seeks to minimize this problem in two ways. First, it establishes "floors and ceilings," as discussed under section III.D(1) above. Second, it provides the Secretary with additional authority to adjust an automobile manufacturer's model year 1990 fuel economy (by which the uniform percentage increase is multiplied to establish the automobile manufacturer's CAFE standard) if "necessary to remove any artificial competitive advantage among manufacturers that otherwise would result." This latter authority can only be used, however, if the adjustment "would not reduce the overall fuel economy of all manufacturers."

(7) New entrants

Neither S. 279 nor the Committee bill provide for the case of a company producing automobiles or trucks for the first time after model year 1988 (for S. 279) or 1990 (for the Committee bill). Such a company would not have the "base year" fuel economy data from which future CAFE standards are calculated. My proposal would correct this deficiency by authorizing the Secretary to set CAFE standards for the new entrant at the level the Secretary deter-

mines the company is capable of achieving. Once again, though, the Secretary's discretion is limited. At a minimum, the new entrant would be required to achieve the maximum feasible average fuel economy achievable by the industry as a whole. At most, the new entrant would be required to achieve the highest maximum feasible average fuel economy level assigned to a company who did manufacture vehicles in model year 1990.

(8) Gaming

My proposal would require the Department of Transportation to study the problem of "gaming," (i.e., artificially avoiding the intent of CAFE standards) and submit a report to Congress within 18 months of the date of enactment recommending measures to address this problem.

IV. DETAILED DERIVATION OF JOHNSTON CAFE STANDARDS

This section explains the methodology for deriving the CAFE standards for automobiles and trucks. The section is organized as follows:

- A. General Assumptions Regarding Automobiles.
- B. 1996 CAFE Standards for Automobiles.
- C. 2001 CAFE Standards for Automobiles.
- D. 2006 CAFE Standards for Automobiles.
- E. General Assumptions Regarding Trucks.
- F. 1996 CAFE Standards for Trucks.
- G. 2001 CAFE Standards for Trucks.
- H. 2006 CAFE Standards for Trucks.
- I. Treatment of New Technologies.
- J. Treatment of Alternative Fuel Credits.

A. General Assumptions Regarding Automobiles

The CAFE standards for automobiles are based on the testimony of OTA and K.G. Duleep at the March 20th CAFE hearing and on Mr. Duleep's response to questions for the hearing record. This response is reproduced at the end of this section.

Mr. Duleep's computer model produces estimates of fuel economy potential for automobiles for the domestic fleet and the import fleet. These estimates receive a 1% upward adjustment known as the "EPA testing adjustment". The domestic and import automobile estimates are averaged to produce a fleetwide average. The averaging procedure is known as harmonic averaging and is written into current CAFE law. It tends to give more weight to low-MPG automobiles, thus pulling the fleetwide average downward. An assumption must be made on market shares for domestics and imports. Staff used the same market share assumptions as OTA: 65% domestic, 35% import.

The scenarios developed for 1996, 2001, and 2006 are consistent with the criteria in the Committee bill: maximum practical achievable use of current technologies and technologies capable of being commercialized, 1990 size and performance, and current safety and emission standards.

B. 1996 CAFE Standard for Automobiles

The opportunities for improving fuel economy by 1996 are very limited. OTA testified that the most one could expect is an extra 1 MPG beyond the product plan scenario. OTA estimates that automakers' current Product Plans would result in a fleetwide CAFE of 29.2 MPG. Thus a realistic fleetwide CAFE standard for 1996 would be 30.2 MPG. This would represent a 7.5% increase over the 1990 base year of 28.1 MPG.

C. 2001 CAFE Standard for Automobiles

Committee staff developed a scenario for 2001 in which fuel-saving technologies would further penetrate the market, but not achieve the 100% market penetration of the maximum technology scenario. As argued earlier, CAFE standards that would require such penetration levels would be costly, risky, and disruptive of the industry.

The 2001 scenario assumes market penetration rates equal to those in Mr. Duleep's hypothetical "2001 Product Plan" scenario and assumes that the fleet returns to 1990 size and performance levels after trending upward in the early 1990's. Technology penetration rates vary from 100% for easy-to-adopt technologies (e.g., advanced tires and lubrication) to 50% for more difficult-to-adopt technologies (e.g., advanced transmissions). Market penetration rates for each technology are summarized in the attached table prepared by Committee staff.

When this scenario is run in Mr. Duleep's model, it results in a domestic fleet CAFE of 32.9 MPG and an import fleet CAFE of 35.1 MPG.¹¹ Applying the 1% testing adjustment and averaging the fleet results in a fleetwide CAFE standard of 34.0 MPG. This would represent a 20.9% increase over the 1990 base year of 28.1 MPG.

D. 2006 CAFE Standard for Automobiles

Staff developed a scenario for 2006 in which fuel-saving technologies would achieve close to 100% market penetration. By 2006, automobile manufacturers will have redesigned all their products in the normal cycle of business, thus nearly full market penetrations are practical. Market penetration rates for all technologies are summarized in the table appearing at the end of this section. They include the two-stroke engine, which has a strong probability of being commercialized in this time frame.

When this scenario is run in Mr. Duleep's model, it results in a domestic fleet CAFE of 36.9 MPG and an import fleet CAFE of 39.4 MPG.¹² Applying the 1% testing adjustment and averaging the fleet results in a fleetwide CAFE standard of 38.1 MPG. This would represent a 35.6% increase over the 1990 base year of 28.1 MPG. However, if this percentage increase were applied to the import fleet, it would require a CAFE standard of 41.0 MPG. This is more than the import fleet can achieve without reducing size or performance, and thus would violate the criteria in the Committee bill.

¹⁰ Hearings, op. cit., pp. 170, 173.

¹¹ Duleep response, op. cit., Table 1, Scenario 3b.

¹² Duleep response, op. cit., Table 1, Scenario 2.

This problem arises because the fuel economy potential of the import fleet (on a percentage basis) is lower than that of the domestic fleet. When the two are averaged, the uniform percentage increase drives imports beyond their potential, while leaving domestics somewhat under their potential.

To avoid violating the criteria, the percentage increase is capped at the level that the import fleet is capable of achieving. With the 1% testing adjustment, Importers are capable of achieving a CAFE of 39.8 MPG. Their 1990 base year CAFE is 30.2 MPG; thus they are capable of a 31.8% increase by 2006. When this percentage is applied to the fleet as a whole, the result is a CAFE standard of 37.0 MPG (28.1 MPG + 31.8%).

E. General Assumptions Regarding Trucks

Light trucks account for 30% of all vehicle sales. Two factors should be considered in setting new CAFE standards for light trucks. First, Mr. Duleep has analyzed the domestic truck fleet, but this analysis has not received the same scrutiny and peer review as his analysis of the automobile fleet. Second, there is no analysis available for imported trucks. Though imports make up a smaller percentage of the truck fleet than the automobile fleet, they still represent about 20% of the light truck market.

Notwithstanding these factors, the CAFE standards for trucks in my proposal aim for consistency with the criteria in the Committee bill.

Mr. Duleep's computer model produces estimates of fuel economy potential for light trucks in the domestic fleet. There is no 1% upward testing adjustment as is the case for automobiles.

F. 1996 CAFE Standard for Trucks

The opportunities for improving fuel economy for trucks by 1996 are very limited. Mr. Duleep estimates that the current product plans of domestic truck manufacturers would result in a CAFE of 21.2 MPG by 1996.¹³ A realistic domestic truck CAFE standard for that year would be slightly above this at 21.5 MPG. This would represent a 5.9% increase over the 1990 base year CAFE of 20.3 MPG. Applied to the combined domestic and import truck fleet, this percentage increase would result in a 1996 CAFE standard of 22.0 MPG (compared to a 1990 level of 20.8 MPG).

G. 2001 CAFE Standard for Trucks

The maximum technology scenario for domestic light trucks projects a CAFE standard of 26.0 MPG.¹⁴ This scenario assumes 100% penetration of fuel-saving technologies and, if it became the domestic truck CAFE standard for 2001, would be costly, risky, and potentially disruptive of the industry.

By 2001, truck manufacturers could make partial progress toward the maximum technology scenario. A realistic CAFE for 2001 would be 23.5 MPG, which would require substantial movement toward the maximum technology level of 26.0 MPG. A domestic truck CAFE of 23.5 MPG would represent a 15.8% increase over

¹³ Duleep response, op. cit., p. 2.

¹⁴ Duleep response, op. cit., p. 2.

1990. Applied to the combined domestic and import truck fleet, this percentage increase would result in a 2001 CAFE standard of 24.0 MPG.

H. 2006 CAFE Standard for Trucks

The scenario for 2006 envisions fuel-saving technologies achieving close to 100% market penetration. By 2006, truck manufacturers will have redesigned all their products in the normal cycle of business, thus nearly full market penetrations are practical. This scenario is conservative in that it does not include the two-stroke engine (which could penetrate the truck fleet just as it could penetrate the automobile fleet).

A domestic truck CAFE of 26.0 MPG would represent a 28.0% increase over 1990. Applied to the combined domestic and import truck fleet, this percentage increase would result in a 2006 CAFE standard of 26.6 MPG.

I. Treatment of New Technologies

Mr. Duleep's analysis of fuel economy 1996 and 2001 examines those technologies that are currently commercialized in one or more vehicles. Some new technologies could certainly appear by 2001, but their market penetrations would be so small that they would not have a significant impact on the overall fleet MPG.

After examining technologies that are capable of being commercialized and that could achieve significant market penetrations by 2006, the staff included the two-stroke engine in the 2006 scenario. It is perhaps the most promising new technology on the horizon. The two-stroke engine offers a fuel economy gain of 7-10 percent over today's best 4 cylinder/4 valve engines.

The commercial prospects of this engine are good for several reasons. It promises high durability because it has fewer moving parts than conventional engines. The cost of the engine is projected to be lower than conventional engines. It promises better performance, particularly in the low-RPM range. Most importantly, major United States and Japanese companies are showing strong interest in the two-stroke engine, and some are testing prototype designs. There are questions about the ability of the two-stroke engine to meet Tier II emission standards in the event they are imposed. Tier II standards might require the Secretary of Transportation to use the authority to revise the CAFE standards.

There several technologies that staff did not include in the 2006 scenario because of anticipated problems in consumer acceptance.

(1) *Diesel engines* could increase fuel economy but their market share is near zero. Consumers generally dislike their performance (e.g., smoke, acceleration, vibrations, noise, cold-start capability). Diesels are also more expensive than conventional engines. Diesels may not be able to meet future emission standards, as is the case with two-stroke engines.

(2) *"Idle-off" or "stop-start"* is a technology that could deliver fuel savings. It literally shuts the engine off during deceleration or idle. Volkswagen and Toyota have offered this option in some models sold in other countries but consumers have rejected it. Idle-off shuts down accessories (e.g., airconditioning and heating). It causes a restart delay that is unacceptable in many driving condi-

tions. One VW engineer described driving a automobile with idle-off as "unnerving".

(3) *Electric-gasoline* hybrids show some promise, but consumer acceptance is still doubtful without technological breakthroughs in batteries. The time required to recharge batteries may not be acceptable to consumers. Heating, defrosting, and air-conditioning are still problematic in hybrid vehicles.

(4) *Drive by wire* is a general term for integrated electronic control of the throttle, fuel injection, spark, and transmission of an automobile. It could achieve a small boost in CAFE levels but at a very high cost. According to Mr. Duleep, the reason drive by wire offers only a modest CAFE increase is that its greatest savings are in reducing pumping losses, reductions that are also achieved in part by technologies already in the maximum technology scenario (e.g., 4-valve engines, intake valve control, and 5-speed automatic transmissions). In addition, automobile manufacturers generally have optimized their cars to perform well in the EPA test cycle, hence CAFE improvements are low. Consumer acceptance could also be a problem because the "driving feel" could be very different with drive by wire.

J. Treatment of Alternative Fuel Credits

Under current law, automobile manufacturers can gain CAFE credits through the production of alternative fuel vehicles. Companies can gain a maximum credit of 1.2 MPG for flexible-fuel vehicles (FFVs) and unlimited credits for dedicated fuel vehicles (DFVs). Some would argue that Congress should take into account the availability of CAFE credits when setting new CAFE standards. For instance, if technical analysis shows that the fleet can achieve a CAFE of 30.2 MPG in 1996, why not add 1.2 MPG for FFVs? And another, say, 0.5 MPG for DFVs?

There are problems in layering on alternative fuel credits in this manner. First, it would be contrary to the letter and spirit of the laws creating the credits. For example, section 513(g)(2)(B) of the Motor Vehicle Information and Cost Savings Act states that Secretary of Transportation shall not consider alternative fuel credits in amending CAFE standards. Alternative fuel vehicles were intended to be an option for CAFE compliance. Layering on the credits to arrival at new CAFE standards would be tantamount to requiring production of these vehicles at certain implied levels.

Second, the layering on of alternative fuel credits could be anti-competitive. Automobile manufacturers with a small percentage of the domestic market would find it difficult to produce FFVs or DFVs in sufficient number to achieve minimal economies of scale. Yet the CAFE standards for all firms would be set as if all firms produced a certain number of alternative fuel vehicles. Small firms might be forced to reduce size and performance under such circumstances.

Third, FFV credits expire in 2003; or can be extended for a maximum of 4 years at a level of 0.9 MPG. For all these reasons, the CAFE standards I have proposed do not include a layering on of alternative fuel credits.

It is commonly believed that automobile manufacturers can easily achieve several MPG of CAFE credits through dedicated fuel

vehicles. This is not true, despite the high CAFE ratings of DFVs (typically 150-200 MPG). The harmonic averaging of an automobile maker's fleet means that the sale of some DFVs does not have a large impact on the fleet CAFE. For instance, if a company's fleet average were 34 MPG with no DFVs, but it managed to sell one DFV for every 100 automobiles (an ambitious task), the fleet average would increase to only 34.3 MPG. If a company's fleet average were 40 MPG with no DFVs, but it managed to sell one DFV for every 25 automobiles (a nearly impossible task), the fleet average would increase to only 41.3 MPG. The mathematics of this issue are not subject to debate. DFV credits cannot come to the rescue of ill-conceived and unrealistic CAFE standards.

V. SUPPLEMENTAL DOCUMENT

- A. Market Penetration Rates.
- B. Post-hearing Questions to, and Response from, Mr. Duleep.
- C. Text of Johnston Amendment.

SUPPLEMENTAL DOCUMENT A

MARKET PENETRATION RATES

DOMESTIC CARS	1996	2001	2006
FRONT WHEEL DRIVE	86	91	99
DRAG REDUCTION 1		80	
DRAG REDUCTION 2			100
WEIGHT REDUCTION 1		80	
WEIGHT REDUCTION 2			100
5-SPEED AUTO TRANSMISSION	0	20	40
CONTINUOUSLY VARIABLE TRANS	0	15	30
LUBE/TIRE IMPROVEMENTS 1	100		
LUBE/TIRE IMPROVEMENTS 2		100	100
INTAKE VALVE CONTROL	0	40	70
ADV ENGINE FRICTION REDUCTION	0	100	100
ELECTRIC POWER STEERING	0	5	30
OVERHEAD CAM ENGINE	69	99	99
MULTI-POINT FUEL INJECTION	60	100	100
TWO-STROKE ENGINE	0	0	30

CHANGES IN CYLINDERS OR VALVES/CYL **

4 CYL/4V REPLACING 4 CYL	[0]	[10]	[50]
4 CYL REPLACING 6 CYL	[18]	[6]	[12]
6 CYL REPLACING 8 CYL	[12]	[4]	[8]

IMPORT CARS

	1996	2001	2006
FRONT WHEEL DRIVE	90	90	95
DRAG REDUCTION 1		80	
DRAG REDUCTION 2			100
WEIGHT REDUCTION 1		90	
WEIGHT REDUCTION 2			100
5-SPEED AUTO TRANSMISSION	0	6	12
CONTINUOUSLY VARIABLE TRANS	0	26	40
LUBE/TIRE IMPROVEMENTS 1	100		
LUBE/TIRE IMPROVEMENTS 2		100	100
INTAKE VALVE CONTROL	0	30	60
ADV ENGINE FRICTION REDUCTION	0	100	100
ELECTRIC POWER STEERING	0	10	35
ROLLER CAM FOLLOWERS	50	80	80
MULTI-POINT FUEL INJECTION	75	100	100
TWO-STROKE ENGINE	0	0	40

CHANGES IN CYLINDERS OR VALVES/CYL **

4 CYL/4V REPLACING 4 CYL	[44]	[10]	[50]
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** Numbers indicate change in market penetration.

NOTES: All market penetration rates are derived from Duleep response, Tables 2, 4, 5, & 7. 1996 penetration rates are equal to 1995 rates under the product plan scenario. 2001 penetration rates are equal to 1996 rates plus change in penetration under the 2001 hypothetical product plan. 2006 penetration rates are equal to 1996 rates plus change in penetration under the 2001 maximum technology scenario. By 2006, the two-stroke engine is assumed to replace all conventional engines that do not have intake valve control.

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United States Senate

COMMITTEE ON
 ENERGY AND NATURAL RESOURCES
 WASHINGTON, DC 20510-8150

April 12, 1991

Mr. K. G. Duleep
 Energy and Environmental Analysis
 1655 N. Fort Meyer Drive
 Suite 600
 Arlington VA 22209

Dear Mr. Duleep:

I would like to thank you for your recent appearance as a contractor to the Office of Technology Assessment at the hearing held by the Committee on Energy and Natural Resources on March 20, 1991. Your time and effort to provide the Committee with your views concerning the provisions of S. 341 pertaining to Corporate Average Fuel Economy (CAFE) are greatly appreciated.

In order to assist the Committee in its consideration of this pending legislation, I am attaching additional questions for inclusion in the hearing record. I would appreciate it if you would provide answers to these questions as soon as possible.

Again, thank you for your testimony. I look forward to receiving your additional comments. If you have any questions concerning this request, please contact Karl Hausker of the Committee staff (202-224-3329).

Sincerely,



J. Bennett Johnston
 Chairman

JBJ/kah

QUESTIONS FOR K. G. DULEEP

1. How would the estimates of domestic and import fuel economy for cars for the 2001 "maximum technology scenario" change if one held size and performance at 1990 levels?

a. What would be the average change in price per car be under this scenario?

b. What would be the average change in car weight be under this scenario?

2. How would the estimates of domestic and import fuel economy for cars for the 2001 "maximum technology scenario" change if one assumed: 100% market penetration of weight reduction, 100% penetration of drag reduction, and 2-stroke engines replacing all 4-stroke engines without intake valve control, and 1990 size and performance levels?

a. What would be the average change in price per car under this scenario?

b. What would be the average change in car weight under this scenario?

3. How would the estimates of domestic and import fuel economy for cars for the 2001 "product plan scenario" change if size and performance were held at 1990 levels?

a. What would be the average change in price per car be under this scenario?

b. What would be the average change in car weight under this scenario?

4. Please describe the factors underlying the weight changes in the three scenarios above. Do some factors involve reduction of materials? Do other factors involve substitution of lighter materials for heavier materials? Describe the effect, if any, of these weight changes on the safety of the cars under these scenarios.

5. Please provide in writing your most recent estimates of fuel economy potential for domestic light trucks in 1996 and 2001 (product plan and maximum technology scenarios). When you update this analysis, please provide a copy to the Committee.

a. Have you conducted any analysis of fuel economy potential for imported light trucks? If so, please provide a copy to the Committee.

b. Are you aware of any other published studies of fuel economy potential for imported light trucks? If so, please provide the citations.

ENERGY AND ENVIRONMENTAL ANALYSIS, INC.

1855 NORTH FORT MYER DRIVE ARLINGTON, VIRGINIA 22206 FAX: 703/388-5106 TEL: 703/848-1900



May 7, 1991

Senator Bennett Johnston
 Chairman, Committee on Energy and Natural Resources
 United States Senate
 Washington, DC 20510

Dear Sir:

I am writing in response to the questions posed to me by the Senate Energy Committee Staff following the hearing held on S.341 pertaining to Corporate Average Fuel Economy.

The answers to question 1, 2 and 3 are presented in Table 1 in the attachment to this letter. The fuel economy numbers are supported with more detailed documentation in the attached tables 2 to 7. Your question 3 requests an estimate of the "product plan" scenario if size and performance were held constant at 1990 levels. Of course, freezing size and performance at 1990 levels departs from the "product plan" and so the terminology may cause some confusion. As a result, I have assumed that the question relates to the technologies adopted and not the product plan itself as the terminology is commonly understood.

Answer to Question 4 In the maximum technology scenario, weight is reduced by aggressive material substitution, and also as a result of conversion to front wheel drive. Depending on the specific component, different materials can be used to replace steel. For example, Sheet Molding Compound (SMC) can be used to replace the hood and fenders, Injection Molded Plastics for the bumper and fuel tank, high strength low alloy steel in load bearing structures, aluminum for wheels and the cylinder head/engine block. Material substitution is projected to occur in 80 percent of all cars by 2001, with the other 20 percent representing carryover body lines in that year or products that already incorporate many of the above materials. Front-wheel drive is also expected to be incorporated into designs replacing the few older rear-wheel drive designs still left in the marketplace. (These designs accounted for 25 percent of the market in 1988, and 15 percent in 1990). Weight reduction due to front-wheel drive is expected to be significant, averaging 400 lbs per rear wheel drive car, and is largely as a result of the improved packaging efficiency of front-wheel drive, as well as conversion to unit body construction.

The weight reductions are partially offset by the weight increase due to the installation of air bags and side restraints. The weight increase will be approximately 75 to 95 lbs depending on car size, according to DOT. It should be noted that many 1990 vehicles already feature air bags and some can meet the side intrusion standards with no design changes. These changes will contribute to a net benefit in safety.

Letter to Senator Bennett Johnston
May 7, 1991
Page Two

The impact on safety due to material substitution and consequent weight reduction is expected to be small or non-existent due to the fact that (1) newer lighter materials will be as strong as current materials and (2) the overall length and width of the car will be unchanged. Front wheel drive conversion is expected to make the exterior dimension of vehicles smaller, making them less safe, but front-wheel drive vehicles offer better traction in poor weather conditions making them more safe; it is difficult to estimate how well the two factors counteract each other. EEA would look to ongoing analysis being conducted by DOT to answer these questions.

Answer to Question 5 - The analysis for light trucks that was initially performed in 1988 has not received the level of scrutiny and subsequent updates that were performed for the analysis of car fuel economy. Based on preliminary update of the 1988 analysis, I can report the following numbers for domestic manufacturers. These estimates assume 1990 levels of performance, but there are some mix changes assumed due to the projected increase in popularity of mini-vans that are factored into the estimates.

	<u>Product Plan</u>	<u>Maximum Technology</u>
1996	21.2	21.7
2001	23.4	26.0

We have not evaluated the potential 1996/2001 fuel economy for import light trucks but can state the percent increases in fuel economy from the 1990 baseline are likely to be smaller than those for domestic light trucks. We are not aware of any other study on light truck fuel economy in the public domain.

I hope that the attached tables are self-explanatory. If any questions arise, please feel free to contact me.

Yours sincerely,



K.G. Duleep
Director of Engineering

KGD:gyv

TABLE 1
ANSWERS TO QUESTIONS 1, 2, AND 3

<u>Scenario</u>	<u>Manufacturer</u>	<u>F/E</u>	<u>Change in Weight**</u>	<u>Change in Cost (1988\$)</u>
1) Max Technology 2001	Domestic	35.7	-250 lbs.	928
	Import	37.9	-187 lbs.*	650*
2) Max Technology 2001 and Modifications	Domestic	36.9	-350 lbs.	980
	Import	39.4	-268 lb*	698*
3a) Product Plan 2001	Domestic	31.6	+22 lbs.	477
	Import	34.2	+140 lbs.*	442*
3b) Adjusted product plan w/size and performance at 1990 levels	Domestic	32.9	-105 lbs.	477
	Import	35.1	-54 lbs.*	442*

Weight and cost changes relative to 1990.

* Values for typical Japanese car.

** Negative sign implies weight decrease.

TABLE 2
1995 DOMESTIC MANUFACTURERS FUEL ECONOMY
PRODUCT PLAN CASE

Technology	F/E Gain (%)	Penetration Increase from 1987 (%)	1995 Penetration	Fleet F/E Gain
Front Wheel Drive	10.0	12	86	1.20
Drag Reduction (C_d -0.33)	2.3/4.6**	63/15	-100	2.19
4-speed Automatic Transmission	4.5	60	80	1.80
Torque Converter Lock-up	3.0	20	80	0.60
Electronic Transmission Control	0.5	80	80	0.40
Accessory Improvements	0.5	80	N/M	0.40
Lubricant/Tire Improvements	1.0	100	100	1.00
Engine Improvements				
- Advanced Pushrod	3.0	(40)	(30)	1.20
- Overhead Camshaft	3.0	45	69	1.35
- Roller Cam Followers	2.0	40	95	0.80
- Low Friction Pistons/Rings	2.0	80	100	1.60
- Throttle Body FI	3.0	12	40	0.36
- Multi-point FI (over throttle body)	3.0	12	60	0.36
6 valves per cylinder engine				
- 4 cylinder replacing 6"	8.0	18	18	1.44
- 6 cylinder replacing 8"	8.0	12	12	<u>0.96</u>
Total F/E Benefit				<u>15.66%</u>

Number in parenthesis for advanced pushrod indicates 45 percent of pushrod engines replaced by OHC engines.

N/M: Not meaningful.

* 1987 distribution: 20.5% V-8, 29.5% V-6, 50% 4 cylinder

** Drag reduction for large/luxury cars from C_d = 0.42 baseline.

TABLE 3
DOMESTIC MANUFACTURERS
FUEL ECONOMY UNDER ALTERNATIVE SCENARIOS

1987 Fuel Economy:	26.7 MPG
1995 Fuel Economy w/o size or performance increase	30.9 MPG
Size/weight Increase	-1.4 MPG
Performance Increase	-0.7 MPG
Effect of Emission/Safety Standards	<u>-0.8 MPG</u>
1995 Product Plan F/E	<u>28.0 MPG</u>

1995 MAX. TECHNOLOGY CASE

1995 Fuel Economy w/o size or performance increase	30.9 MPG
Effect of Emission/Safety Standards	-0.8 MPG
Replace all TBI of with MPFI	+0.32 MPG
Increase OHC penetration to 80%	+0.08 MPG
Size/Weight increase to '90 (est.)	-0.60 MPG
Performance Increase to '90 (est.)	<u>-0.40 MPG</u>
1995 Max Tech Case at 1990 size and performance	29.5 MPG

TABLE 4
DOMESTIC MANUFACTURERS'
POTENTIAL U.S. FUEL ECONOMY IN 2001 UNDER ALTERNATIVE SCENARIOS

	Fuel Economy Benefit	Product Plan Hkt. Pen 1995 - 2001	Max. Technology Hkt. Pen 1995 - 2001
Weight Reduction	3.3/6.6	80	80
Drag Reduction	1.15/2.3	80	80
Intake Valve Control*	6.0	40	70
Overhead Cam Engines	3.0	30	30
6 cyl./4V replacing 8 cyl.	8.0	4	8
4 cyl./4V replacing 6 cyl.	8.0	6	12
4 cyl./4V replacing 4 cyl.	5.0	10	30
Multi-point fuel injection (over TBI)	3.0	40	40
Front wheel drive	10.0	5	13
3-speed auto. transmission**	2.5	20	40
Continuously variable transmission*	3.5	15	30
Advanced engine friction reduction	2.0	100	100
Electric Power Steering	1.0	5	30
Tire Improvements	0.5	100	100
Total F/E Benefit (%)		13.02*	22.62*
2001 mpg		31.65	35.7

Note: Product plan scenario starts from a different 1995 base than the maximum technology scenario, which holds performance and size constant at 1990 levels.

* Synergy of intake valve control with 3-speed/CVT transmissions results in a loss of 2 percent in fuel economy in vehicles featuring both technologies.

** Over 4-speed auto transmission with lock-up.

TABLE 5
1993
IMPORT MANUFACTURERS
FUEL ECONOMY
PRODUCT PLAN CASE

Technology	F/E Gain	Penetration Increase from 1988	1995 Penetration	Fleet F/E Gain
Front Wheel Drive*	5.0	3	90	0.15
Drag Reduction I	2.3	80	-100	1.84
4-speed Auto. Trans.	4.5	16	47	0.72
Torque Converter LU	3.0	9	53	0.27
Elec. Trans. Control	0.5	44	47	0.22
Accessory Improvements	0.5	80	N/M	0.40
Tires/Lubricants	1.0	100	100	1.00
Roller Cam Followers	2.0	50	50	1.00
Low Friction Piston/Rings	2.0	80	100	1.60
Throttle Body FI**	2.0	25	20	0.50
Multi-Point FI	3.0	20	75	0.60
4 Valves/Cylinder	5.0	20	44	1.00
TOTAL F/E BENEFIT (%)				<u>9.30</u>

* F/E gain based on conversion of unit body RWD vehicle.

** Benefit of TBI is lower than for domestic cars because air pumps are not used in carburetted import cars.

TABLE 6
1995
IMPORT MANUFACTURERS
FUEL ECONOMY
UNDER ALTERNATIVE SCENARIOS

Product Plan Case

1988 Fuel Economy	31.4 MPG
1995 Fuel Economy without size or performance increase	34.32 MPG
Size/Weight increase	-1.66 MPG
Performance Increase	-0.90 MPG
Effect of Safety/Emission Std.	-0.94 MPG
1995 Product Plan F/E	<u>30.82 MPG</u>

Maximum Technology Case

1995 Fuel Economy without size or performance increase	34.32 MPG
Effect of Safety/Emission Standard	-0.94 MPG
Replace all TBI with MPFI	+0.23 MPG
Increase roller cam penetration to 80%	+0.19 MPG
Size/weight increase to 1990	-1.08 MPG
Performance increase to 1990	-0.68 MPG
1995 Maximum Technology F/E	<u>32.04 MPG</u>

TABLE 7
IMPORT MANUFACTURERS
FUEL ECONOMY IN 2001

Technology	F/E Benefit	Product Plan		Maximum Technology**	
		Mkt. Pen.	F/E Gain	Mkt. Pen.	F/E Gain
Weight Reduction	3.3/6.6	90	2.97	90	5.94
Drag Reduction	1.15/2.3	80	0.92	80	1.84
Intake Valve Control*	6.0	30	1.80	60	3.60
4-Valve Engine	5.0	10	0.50	50	2.50
Multi-point FI	3.0	25	0.75	0	0.00
Front Wheel Drive	10.0	0	0.00	5	0.50
5-Speed Auto. Trans.	2.5	6	0.15	12	0.30
CVT	3.5	26	0.91	40	1.40
Advanced Friction Reduction	2.0	100	2.00	100	2.00
Electric Power Steering	1.0	10	0.10	35	0.35
Tire Improvements	0.5	100	0.50	100	0.50
TOTAL F/E BENEFIT (%)			11.00*		19.68*
2001 MPG			34.2		37.9

* Synergy with 5-spd auto-transmission/CVT results in 2 percent loss in F/E when both technologies are used in the same vehicle.

** Maintains 1990 level of size/performance.

JOHNSTON AMENDMENT

Strike all of Title III and insert the following:

TITLE III—CORPORATE AVERAGE FUEL ECONOMY

SEC. 3101. SHORT TITLE.—This subtitle may be cited as the “Motor Vehicle Fuel Efficiency Act of 1991”.

SEC. 3102. DEFINITIONS.—Section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001) is amended by adding at the end the following new paragraphs:

“(15) The term ‘light truck’ means an automobile other than a passenger automobile.

“(16) The term ‘vehicle class’ means (i) all passenger automobiles; or (ii) all light trucks.”.

SEC. 3103. AVERAGE FUEL ECONOMY STANDARDS FOR PASSENGER AUTOMOBILES.—Section 502(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(a)) is amended by striking subsection (a) and inserting the following:

“(a)(1) Except as otherwise provided in subsection (c) or (f), the average fuel economy for passenger automobiles manufactured by any manufacturer in any model year after model year 1991 shall not be less than the number of miles per gallon established for such model year under the following table:

“Average fuel economy standard

“Model year:

“1992 through 1995.....	27.5 miles per gallon.
“1996 through 2000.....	Determined by the Secretary under paragraph (2)(A).
“2001 through 2005.....	Determined by the Secretary under paragraph (2)(B).
“2006 and thereafter	Determined by the Secretary under paragraph (2)(C).

“(2) Not later than 18 months after the enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary shall prescribe, by rule, for each manufacturer of passenger automobiles, an average fuel economy standard for passenger automobiles manufactured by such manufacturer in—

“(A) model years 1996 through 2000;

“(B) model years 2001 through 2005;

“(C) model year 2006 and thereafter.

“(3)(A) The average fuel economy standard prescribed by the Secretary for any manufacturer under paragraph (2) (A), (B), or (C) shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for such manufacturer as determined under subsection (d).

“(B) Notwithstanding subparagraph (A), the standard prescribed for any manufacturer under paragraph (2) (A), (B), or (C) shall not be:

“(i) lower than 27.5 miles per gallon or higher than 40 miles per gallon for model years 1996 through 2000;

“(ii) lower than 28.5 miles per gallon or higher than 42 miles per gallon for model years 2001 through 2005; or

“(iii) lower than 30 miles per gallon or higher than 45 miles per gallon for model year 2006 and thereafter.”.

SEC. 3104. AVERAGE FUEL ECONOMY STANDARDS FOR LIGHT TRUCKS.—Section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) is amended further by striking subsection (b) and inserting the following:

“(b)(1) The Secretary shall, by rule, prescribe average fuel economy standards for light trucks which are manufactured by any manufacturer in each model year before model year 1996. Such standards shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level which such manufacturers are able to achieve in each model year to which this subsection applies. Any standard applicable to a model year under this subsection shall be prescribed at least 18 months prior to the beginning of such model year.

“(2) Not later than 18 months after the enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary shall prescribe, by rule, for each manufacturer of light trucks, an average fuel economy standard for light trucks manufactured by such manufacturer in—

“(A) model years 1996 through 2000;

“(B) model years 2001 through 2005;

“(C) model year 2006 and thereafter

“(3)(A) The average fuel economy standard prescribed by the Secretary for any manufacturer under paragraph (2)(A), (B), or (C) shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for such manufacturer as determined under subsection (d).

“(B) Notwithstanding subparagraph (A), the standard prescribed for any manufacturer under paragraph (2)(A), (B), or (C) shall not be:

“(i) lower than 20 miles per gallon or higher than 30 miles per gallon for model years 1996 through 2000;

“(ii) lower than 22 miles per gallon or higher than 32 miles per gallon for model years 2001 through 2005; or

“(iii) lower the 24 miles per gallon or higher than 35 miles per gallon for model year 2006 and thereafter.”

SEC. 3105. EXEMPTIONS FOR MANUFACTURERS OF LIMITED NUMBERS OF PASSENGER AUTOMOBILES.—Section 502(c)(1) of the Motor Vehicle Information and Cost Saving Act (15 U.S.C. 2002(c)(1)) is amended by inserting “for any model year prior to model year 1996” immediately before the period at the end of the first sentence.

SEC. 3106. CALCULATION OF AVERAGE FUEL ECONOMY STANDARDS FOR INDIVIDUAL MANUFACTURERS.—Section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) is amended further by striking subsection (d) and inserting the following:

“(d)(1) The Secretary shall determine the maximum feasible average fuel economy achievable for passenger automobiles or light trucks manufactured by any manufacturer (i) during model years 1996 through 2000; (ii) during model years 2001 through 2005; and (iii) during model year 2006 and thereafter by—

“(A) determining, in accordance with subsection (e), the maximum feasible average fuel economy (in miles per gallon) of all automobiles of such vehicle class manufactured by all manu-

facturers during such period assuming the use of maximum practical achievable technology;

“(B) calculating the percentage increase in the average fuel economy of all automobiles of such vehicle class that the maximum feasible average fuel economy determined in paragraph (1) represents compared to the average fuel economy of all automobiles of such vehicle class manufactured in model year 1990 as determined in accordance with section 503; and

“(C) increasing the average fuel economy of automobiles of such vehicle class manufactured by such manufacturer in model year 1990 by the greater of:

“(i) the percentage increase calculated in accordance with paragraph (1)(B); or

“(ii) the following percentage increase for the applicable period:

“(I) for model years 1996 through 2000, 7.5 percent for passenger automobiles and 5.9 percent for light trucks;

“(II) for model years 2001 through 2005, 20.9 percent for passenger automobiles and 15.8 percent for light trucks;

“(III) for model year 2006 and thereafter, 31.8 percent for passenger automobiles and 28.0 percent for light trucks.

“(2) Except as provided in subsection (a)(3)(B) or (b)(3)(B), the Secretary shall apply the same percentage increases to all manufacturers of automobiles of such vehicle class.

“(3) Notwithstanding paragraph (1)(C), upon the application of any manufacturer, the Secretary may adjust the model year 1990 average fuel economy of a vehicle class manufactured by such manufacturer used to calculate such manufacturer's maximum feasible average fuel economy under this subsection if—

“(A) necessary to remove any artificial competitive advantage among manufacturers that otherwise would result; and

“(B) the adjustment would not reduce the overall fuel economy of all manufacturers under this part.

“(4)(A) With respect to the manufacturer of automobiles in any vehicle class which did not manufacture automobiles in such vehicle class in model year 1990, the maximum feasible average fuel economy level of such vehicle class for model years 1996 through 2000, model years 2001 through 2005, and model year 2006 and thereafter shall be equal to the greater of:

“(I) the maximum feasible average fuel economy of all automobiles of such vehicle class manufactured by all manufacturers during such period under paragraph (1)(A); or

“(II) such higher level as the Secretary determines the manufacturer is capable of achieving after considering the factors set forth in subsection (e).

“(B) Notwithstanding subparagraph (A)(II), no manufacturer of automobiles in any vehicle class which did not manufacture automobiles in such vehicle class in model year 1990 shall be assigned a maximum feasible average fuel economy level greater than the highest maximum feasible average fuel economy level assigned to a manufacturer under paragraph (1).”.

SEC. 3107. DETERMINATION OF MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—Section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) is amended further by striking subsection (e) and inserting the following:

“(e)(1) For purposes of this section, in determining maximum feasible average fuel economy, the Secretary shall consider—

“(A) technological feasibility;

“(B) economic practicability;

“(C) the effect of other Federal motor vehicle standards on fuel economy; and

“(D) the need of the Nation to conserve energy.

“(2) For purposes of determining maximum feasible average fuel economy under subsection (d), the Secretary shall assume use of the maximum practical achievable fuel-saving technology. In evaluating maximum practical achievable technology, the Secretary shall assume that, taken as a whole, the population of automobiles of each vehicle class manufactured by all manufacturers during the appropriate model year—

“(A) uses all economically practicable fuel-saving technologies that are capable of being commercialized by the first model year of the appropriate period, considering—

“(i) the time at which improved new technologies could be introduced and the rates at which they might penetrate the market under existing industrial capabilities; and

“(ii) any technical, financial, regulatory, organizational, and marketing limitations to deploying improved or new technologies by the first model year of such period;

“(B) attains the same performance level as automobiles manufactured in model year 1990, taken as a whole; and

“(C) reflects the same size mix and interior volume as automobiles of the same vehicle class manufactured in model year 1990, taken as a whole.

“(3) In evaluating the effect of other Federal motor vehicle standards on fuel economy for purposes of subsection (d), the Secretary shall assume that each vehicle meets all applicable emission standards and automobile safety standards in effect by the first model year of the appropriate period.

“(4)(A) Not later than 5 years before the beginning of model years 2001 and 2006, the Secretary shall conduct a rulemaking proceeding to reevaluate the Secretary's determinations of the maximum feasible average fuel economy of passenger automobiles and of light trucks under paragraph (1)(A). The Secretary shall reevaluate determinations with respect to model years 2001 through 2005 5 years before the beginning of model year 2001, and determinations with respect to model year 2006 and thereafter 5 years before the beginning of model year 2001 and again 5 years before the beginning of model year 2006.

“(B) Based upon such reevaluation, the Secretary may increase or decrease the percentage increase calculated under paragraph (1)(B), and may amend, in accordance with subsection (f), any standard set under subsection (a), (b), or (c).

“(C) Notwithstanding subsection (d)(1)(C)(ii), the Secretary may, by rule, reduce the minimum percentage increases specified in

such subsection by an amount that would reduce average fuel economy in any vehicle class by no more than:

“(I) 1 mile per gallon for model years 1996 through 2000;

“(II) 2 miles per gallon for model years 2001 through 2005;

and

“(III) 3 miles per gallon for model years 2006 and thereafter.

“(5) For purposes of this subsection, the Secretary shall not consider the fuel economy of alcohol powered automobiles or natural gas powered automobiles, and the Secretary shall consider dual energy automobiles and natural gas dual energy automobiles to be operated exclusively on gasoline or diesel fuel.”.

SEC. 3108. AMENDMENT OF STANDARDS.—Section 502(f) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(f)) is amended—

(1) by striking “subsection (a)(3)” and inserting “subsection (a)” each place it appears;

(2) by striking “meets the requirements of subsection (a)(3), (b), or (c), as the case may be” and inserting “is set at a level the Secretary determines is the maximum feasible average fuel economy level which the manufacturer to which it applies is able to achieve”; and

(3) by striking “if required by paragraph (4) of subsection (a),” in paragraph (2)(B).

SEC. 3109. PROCEEDINGS.—Section 502(h) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(h)) is amended by striking “Proceedings under subsection (a)(4) or (d)” and inserting “Any proceeding to promulgate or amend a rule under this section”.

SEC. 3110. CREDIT TRADING.—(a) **CARRYING BACK CREDITS.**—Section 502(l)(1)(B)(i) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(l)(1)(B)(i)) is amended by striking “three” and inserting “five”.

(b) **CARRYING FORWARD CREDITS.**—Section 502(l)(1)(B)(ii) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(l)(1)(B)(ii)) is amended to read as follows:

“(ii) to the extent that such credit is not so taken into account pursuant to clause (i), shall be available to be taken into account with respect to the average fuel economy of that manufacturer—

“(I) for any three consecutive model years immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard with respect to credits earned for exceeding average fuel economy standards for model years prior to 1996; and

“(II) until used with respect to credits earned for exceeding average fuel economy standards for model years 1996 and thereafter.”.

(c) **CREDITS FOR LIGHT TRUCKS.**—Section 502(l)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(l)(2)) is amended—

(1) by striking “automobiles which are not passenger automobiles” and inserting “light trucks”; and

(2) by striking “class of automobiles” and inserting “light trucks”.

(d) **CONFORMING AMENDMENTS.**—Section 502(1)(3) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(1)(3)) is amended—

(1) by striking “civil penalty” and “penalty” each place either appears and inserting “fee”; and

(2) by striking “508” and inserting “507”.

(e) **TRANSFERRING CREDITS.**—Section 502(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(1)) is amended by striking paragraph (4) and inserting the following three paragraphs:

“(4) Credits under this subsection may be transferred among manufacturers and among vehicle classes of a manufacturer in accordance with rules issued by the Secretary under paragraph (5).

“(5) Notwithstanding paragraph (4)—

“(A) no credit earned by a manufacturer under paragraph (1) with respect to either passenger automobiles or light trucks which are not domestically manufactured by such manufacturer shall be available to be taken into account with respect to the average fuel economy of passenger automobiles or light trucks which are domestically manufactured by such manufacturer; and

“(B) no credit acquired from another manufacturer under paragraph (4) with respect to either passenger automobiles or light trucks which are not domestically manufactured by such manufacturer shall be available to be taken into account with respect to the average fuel economy of passenger automobiles or light trucks which are domestically manufactured by the acquiring manufacturer.

“(6)(A) The Secretary may prescribe rules for purposes of carrying out the provisions of this subsection.

“(B) Not later than twenty-four months after the date of enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary shall issue rules implementing the credit trading system authorized by paragraph (4). Such rules shall ensure that the transfer of credits does not reduce the average fuel economy of all manufacturers that would result in the absence of such transfers.”.

SEC. 3111. CALCULATION OF FUEL ECONOMY FOR LIGHT TRUCKS.—Section 503(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(a)(2)) is amended by adding before the period the following: “that are based upon the method required by this section for calculation of average fuel economy of passenger automobiles”.

SEC. 3112. AIRBAG CREDIT FOR SMALL PASSENGER AUTOMOBILES.—(a) **AIRBAG CREDIT.**—Section 503(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(a)) is amended—

(1) in paragraph (1) by inserting “, subject to paragraph (4),” immediately before “be calculated”; and

(2) by adding at the end the following new paragraph:

“(4)(A) If a manufacturer manufactures small passenger automobiles which comply with Federal Motor Vehicle Safety Standard Number 208 by means of airbags for the driver seating position only or for both the driver and front seat outboard

seating positions, average fuel economy for purposes of section 502(a) and (c) shall be calculated as provided under subsection (a)(1), except that in the calculation of the sum of terms under subsection (a)(1)(B) the term applicable to any model type of small passenger automobile for which there are automobiles so equipped with airbags shall be determined by adding—

“(i) the fraction that is created by dividing the number of small passenger automobiles of such model type that are equipped with airbags for the driver seating position only, by 105 percent of the fuel economy measured for such model type,

“(ii) the fraction that is created by dividing the number of small passenger automobiles of such model type that are equipped with airbags for both the driver and outboard front seating positions, by 110 percent of the fuel economy measured for such model type, and

“(iii) the fraction that is created by dividing the number of small passenger automobiles of such model type that are not so equipped, by the fuel economy measured for such model type.

“(B) For purposes of this paragraph, the term ‘small passenger automobile’ means a passenger automobile (i) with a wheel base of less than 100 inches, or with a curb weight of 2,750 pounds or less, and (ii) whose measured fuel economy is at least 35 miles per gallon.”.

(b) CONFORMING AMENDMENT.—Section 502(e) of the Motor Vehicle Information and Costs Savings Act (15 U.S.C. 2002(e)) as amended by section 3107 of this Act is amended further by adding at the end the following new paragraph:

“(5) In determining maximum feasible average fuel economy, the Secretary shall not consider the alternative calculation for airbag-equipped passenger automobiles under section 503(a)(4).”.

SEC. 3113. EXPLANATORY BOOKLET DISTRIBUTED BY SECRETARY OF ENERGY.—(a) MINIMUM NUMBER OF COPIES DISTRIBUTED.—Paragraph (1) of section 506(b) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006(b)) is amended by adding at the end the following new sentence: “During the 12-month period beginning on the first day of the first month after the date of enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary of Energy shall distribute no less than 100 booklets each year to each dealer and shall distribute as many in addition to 100 booklets as are reasonably requested by dealers from time to time.”.

(b) TECHNICAL AMENDMENTS.—(1) Section 506(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006(e)) is amended further by striking “Administrator of the Federal Energy Administration” and inserting “Secretary of Energy”.

(2) Section 506(e) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006(e)) is amended by striking “Federal Energy Administrator” and inserting “Secretary of Energy”.

SEC. 3114. EXCESSIVE FUEL CONSUMPTION FEE.—The Motor Vehicle Information and Cost Savings Act is amended by striking section 507 (15 U.S.C. 2007) and inserting the following:

"EXCESSIVE FUEL CONSUMPTION FEE

"SEC. 507. (a) If the Secretary determines, on the record after opportunity for agency hearing, that any manufacturer has failed to meet the applicable average fuel economy standards established under section 502 (a), (b), or (c), the Secretary shall assess the manufacturer an excessive fuel consumption fee in an amount determined under section 508.

"(b) The amount of the fee shall be assessed by the Secretary by written notice.

"(c)(1) Not later than 30 days after a determination by the Secretary under subsection (a) that a manufacturer has failed to meet any applicable average fuel economy standard under section 502, such manufacturer may apply to the Federal Trade Commission for a certification under this subsection. If the manufacturer shows and the Federal Trade commission determines that reduction of the fee which the Secretary shall otherwise assess is necessary to prevent a substantial lessening of competition in that segment of the automobile industry subject to the standard with respect to which such fee is assessed, the Commission shall so certify. The certification shall specify the maximum amount that such fee may be reduced. To the maximum extent practicable, the Commission shall render a decision with respect to an application under this subsection not later than 90 days after the application is filed with the Commission. A proceeding under this subsection shall not have the effect of delaying the manufacturer's liability under this section for a fee for more than 90 days after such application is filed, but any payment made before a decision of the Commission under this subsection becomes final shall be paid to the court in which the fee is collected, and shall (except as otherwise provided in paragraph (2) be held by such court, until 90 days after such decision becomes final (at which time it shall be paid into the general fund of the Treasury).

"(2) Whenever a fee has been assessed and collected from a manufacturer under this section, and is being held by a court in accordance with paragraph (1), and the Secretary subsequently determines to reduce such fee pursuant to section 508(c), the Secretary shall direct the court to remit the appropriate amount of the fee to such manufacturer.

"(d) Any manufacturer assessed a fee under this section may obtain review of a determination (i) of the Secretary to assess such fee or (ii) of the Federal Trade Commission under subsection (c) in the United States Court of Appeals for the District of Columbia Circuit, or for any circuit wherein the manufacturer resides or has his principal place of business. Such review may be obtained by filing a notice of appeal in such court within 30 days after the date of such determination, and by simultaneously sending a copy of such notice by certified mail to the Secretary or the Federal Trade Commission, as the case may be. The Secretary or the Commission, as the case may be, shall promptly file in such court a certified copy of the record upon which such determination was made. Any such determination shall be reviewed in accordance with chapter 7 of title 5, United States Code.

"(2) If any manufacturer fails to pay a fee after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Attorney General shall recover the amount for which the manufacturer is liable in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order assessing the fee shall not be subject to review.

"(e) A claim of the United States for a fee assessed against a manufacturer under this section shall, in the case of the bankruptcy or insolvency of such manufacturer, be subordinate to any claim of a creditor of such manufacturer which arises from an extension of credit before the date on which the judgment in any collection action under this section becomes final (without regard to subsection (d))."

SEC. 3115. AMOUNT OF THE EXCESSIVE FUEL CONSUMPTION FEE.—Subsections (a), (b), (c), and (d) of section 508 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008(a)–(d)) are amended to read:

"AMOUNT OF THE EXCESSIVE FUEL CONSUMPTION FEE

"SEC. 508. (a)(1) The Secretary shall determine the amount of the excessive fuel consumption fee to be assessed under section 507 with respect to passenger automobiles manufactured in any model year by multiplying the base fee provided in subsection (b) by (i) the number of tenths of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer during such model year is exceeded by the applicable average fuel economy standard established under section 502 (a) or (c), multiplied by the number of passenger automobiles manufactured by such manufacturer during such model year, reduced by (ii) credits available under section 502(l) for such model year.

"(2) The Secretary shall determine the amount of the excessive fuel consumption fee to be assessed under section 507 with respect to light trucks manufactured in any model year by multiplying the base fee provided in subsection (b) by (i) the number of tenths of a mile per gallon by which the applicable average fuel economy standard exceeds the average fuel economy of the light trucks manufactured by such manufacturer during such model year, multiplied by the number of light trucks to which such standard applies manufactured by such manufacturer during such model year, reduced by (ii) credits available under section 502(l) for such model year.

"(b) For purposes of calculating the amount of any civil penalty under this section, the amount of the base fee shall be—

"For model years:

"Prior to 1993	\$5.00.
"1993.....	\$10.00.
"1996.....	\$20.00.
"1997 and thereafter	

The amount of the fee applicable in the prior model year as adjusted in accordance with the annual implicit price deflator for the gross national product during such model year.

"(c) The Secretary shall have the discretion to reduce the amount of the fee calculated under this section only to the extent—

"(1) necessary to prevent the insolvency or bankruptcy of the manufacturer,

"(2) such manufacturer shows that its failure to meet the standards of section 502 resulted from an act of God, a strike, or a fire, or

"(3) the Federal Trade Commission has certified that reduction of such fee is necessary to prevent a substantial lessening of competition, as determined under section 507(c).

"(d)(1)(A) The Secretary shall, by rule in accordance with the provisions of this subsection and subsection (e), substitute a higher amount for the amount of the base fee which would be used to calculate the fee under subsection (a) in the absence of such rule, if the Secretary finds that—

"(i) the additional amount of the fee which may be imposed under such rule will result in, or substantially further, substantial energy conservation for automobiles in future model years for which such higher fee may be imposed; and

"(ii) subject to subparagraph (B), such additional amount of fee will not result in substantial deleterious impacts on the economy of the United States or any State or region of any State.

"(B) Any findings under subparagraph (A)(ii) may be made only if the Secretary finds that it is likely that—

"(i) such additional amount of fee will not cause a significant increase in unemployment in any State or region thereof;

"(ii) such additional amount will not adversely affect competition; and

"(iii) such additional amount will not cause a significant increase in automobile imports.

"(2) Any rule under paragraph (1) may not provide that the amount per tenth of a mile per gallon used to calculate the fee under subsection (a) be less than the base fee or more than twice the base fee provided by subsection (b)."

SEC. 3116. ESTABLISHMENT OF THE EXCESSIVE FUEL CONSUMPTION FUND.—Section 508 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008) is amended further by adding at the end the following new subsection:

"(f)(1) There is hereby established in the Treasury of the United States a separate fund, to be known as the Excessive Fuel Consumption Fund. The Fund shall consist of all fees collected by the Secretary under this section.

"(2) Subject to appropriation, the Secretary of Energy may make expenditures from the Fund for purposes of—

"(A) providing financial assistance to the States in accordance with section 514; and

"(B) funding other energy conservation programs, to the extent that the amount available in the Fund exceeds the amount needed under subparagraph (A).

"(3) The Secretary of the Treasury shall hold the Fund and, after consulting with the Secretary of Transportation and the Secretary of Energy, shall report annually to the Congress on the financial condition and operations of the Fund during the preceding fiscal

year. The budget of the Fund shall be included in the Budget of the United States Government.”

SEC. 3117. REPORTS TO CONGRESS.—Section 512 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2012) is amended by adding at the end the following two new subsections:

“(d) Within 18 months after enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary shall prepare and submit to the Congress and the President a report on the extent to which manufacturers may attempt to defeat the purpose of this title by entering into business arrangements whose sole purpose is to manufacture or market automobiles that are less fuel efficient than otherwise required by section 502. Such report shall include consideration of mergers and the manufacture of vehicles and components by one manufacturer for sale under the name of a different manufacturer. Such report shall also include recommendations for legislative and administrative measures to prevent such arrangements from defeating the purpose of this title.

“(e) Within 18 months after enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary shall prepare and submit to the Congress and the President a report on an alternative method of regulating fuel economy that would base fuel economy standards on automobile characteristics such as size class, exterior size, interior volume, weight, performance, or other characteristics deemed appropriate by the Secretary. The Secretary shall assess in the report the extent to which such a method of regulating fuel economy is likely to achieve overall fuel economy improvement, to promote safety advances, to treat all manufacturers equitably, to be technologically feasible; and to facilitate consumer awareness of fuel economy.”

SEC. 3118. SCRAPPAGE OF OLDER VEHICLES.—The Motor Vehicle Information and Cost Savings Act is amended further by adding at the end thereof the following new section:

“**SCRAPPAGE OF OLDER VEHICLES**

“**SEC. 514.** (a) The Secretary of Energy shall provide financial assistance to State programs encouraging the voluntary removal from use and the marketplace pre-1980 model year automobiles.

“(b)(1) Within 180 days after the enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary of Energy, after consulting with the EPA Administrator, shall adopt rules necessary to review and approve State programs that qualify for financial assistance under subsection (a).

“(2) Any rules adopted by the Secretary of Energy under paragraph (1) shall require that to qualify for federal assistance under subsection (a) at least 50 percent of the cost of the program be paid for from State or private funds.

“(c) The Secretary of Energy is authorized, subject to appropriation, to make expenditures from the Excessive Fuel Consumption Fund for purposes of this section.”

SEC. 3119. TECHNICAL AND CONFORMING AMENDMENTS.—(a) **DESIGNATION OF THE EPA ADMINISTRATOR.**—Section 502(g)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(g)(1)) is

amended by striking "Environmental Protection Agency" and inserting "EPA".

(b) **ELIMINATION OF THE SECRETARY'S ADJUSTMENT AUTHORITY.**—Section 502(l)(1)(B) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(l)(1)(B)) is amended by striking "any adjustment under subsection (d) or".

(c) **DESIGNATION OF THE ENERGY AND COMMERCE COMMITTEE.**—Section 503(b)(3)(D)(ii)(II) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(b)(3)(D)(ii)(II)) is amended by striking "Interstate and Foreign Commerce" and inserting "Energy and Commerce".

(d) **LEGISLATIVE VETO.**—Section 504(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2004(a)) is amended by striking "(or in the case of an amendment submitted to each House of the Congress under section 502(a)(4), at any time prior to sixty days after the expiration of the sixty-day period specified in section 502(a)(5))".

(e) **ALTERNATIVE FUEL CREDIT.** Section 513(g)(2)(B) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013(g)(2)(B)) is amended by striking "502(a)(4) and (f)" and inserting "502(f)".

J. BENNETT JOHNSTON.

ADDITIONAL VIEWS OF SENATOR WALLOP

One of the most important tasks facing the Congress is the formulation of a long-term, comprehensive, and consensus-based national energy strategy to foster both domestic energy production and the efficient use of all available energy supplies. The National Energy Security Act of 1991 sets forth such a strategy; one that will not only further our national security interests, but will also create American jobs, help our balance of payments, and lessen our dependence on foreign energy markets and international cartels.

Over the last few months the Committee has worked closely with the Department of Energy and the White House to formulate comprehensive legislation that will set our Nation on the right course toward the more efficient use of energy and greater energy self-sufficiency. The American people deserve nothing less from their elected leaders.

Working on a tight schedule, on May 23rd the Energy and Natural Resources Committee approved by a vote of 17 to 3, legislation—the National Energy Security Act of 1991—which sets forth a national energy strategy for the United States.

What is significant is that this is the first major energy initiative by the Senate and, indeed the Congress, in over ten years. But, more importantly, the measure represents a truly bipartisan effort that is supported by the White House.

The National Energy Security Act contains major energy conservation initiatives which preliminary analyses estimate will reduce primary energy demand in the year 2000 by approximately 1.1 to 1.7 Quads (or the oil equivalent of 517,000 to 800,000 barrels of oil a day). By the year 2010, estimated savings in primary energy demand will be from 7.0 to 8.2 Quads (or the oil equivalent of 3.29 to 3.85 million barrels a day).

The measure also contains major production initiatives which preliminary analyses estimate will increase domestic primary energy supplies in the year 2000 from 3.7 to 4.2 Quads (or the oil equivalent of 1.7 to 2.0 million barrels a day) and in the year 2010 by 4.4 Quads (or the oil equivalent of 2.1 million barrels of oil a day).

As a consequence of these energy efficiency and production initiatives, oil imports are expected to be reduced in the year 2000 by an estimated 2.8 million barrels a day and in the year 2010 by 6.4 million barrels a day.

These savings are achieved by major energy conservation and energy supply initiatives in six complementary areas; and I emphasize, complementary areas.

First, the measure provides incentives which foster a more efficient and expanded use of domestic supplies of natural gas, oil, and coal—all of which we have in abundance. This bill will encourage

the use of domestic energy resources consistent with national environmental concerns.

Second, this measure encourages the greater use of renewable energy and energy efficiency alternatives throughout our economy. In the transportation sector, for example, the measure contains a broad range of energy efficiency and alternative fuels initiatives including the commercialization of electric and electric-hybrid vehicles and the conversion of fleets of 20 or more vehicles to alternative fuels.

It also contains a fair and workable CAFE provisions which reflect concern for American jobs and the health of our domestic automobile industry. The economic viability of the American economy rises and falls with the economic viability of the American automobile industry.

What is important is the CAFE provisions in the National Energy Security Act provide the necessary flexibility for meeting energy efficiency standards which, on a continuing basis, reflect the state of the art as new technologies evolve. This approach accommodates new information as it becomes available, such as that being developed by the National Academy of Sciences for the Department of Transportation. In addition, the measure provides a mechanism to address the critical concern of the American consumer—highway safety.

The testimony that the Committee took on the Bryan bill clearly demonstrated that it takes a command and control approach to CAFE that ignores science and reason. By comparison, the Committee bill permits all Americans to have safety and a diversity in their transportation choices. The measure also provides the necessary flexibility to achieve these objectives and at the same time provide for improvements in automobile fuel economy.

Third, in response to increasingly tough international competition, the measure contains initiatives to more effectively deliver advanced energy technologies developed in the United States to the marketplace as a source for businesses and jobs. These technologies can serve as a critical component in the growth of the United States economy.

Fourth, in support of this objective, the measure restructures many Federal energy research and development programs to place greater emphasis on commercialization of energy technologies. For example, the measure authorizes a broad range of cooperative agreements and joint-ventures in such areas as energy efficiency, renewable energy, electric and electric-hybrid vehicles, advanced nuclear reactor technologies, and the use of natural gas.

Fifth, and an important area, the bill promotes safe nuclear power as an energy option. Nuclear power must be a viable energy option or else the economic and foreign policy implications of our dependence on imported oil will remain a threat to our nation's economic health and energy security.

And, finally, and perhaps the most significant area, the National Energy Security Act removes regulatory barriers that unreasonably restrict the use of domestic energy supplies and constrains the deployment of new, more environmentally benign energy technologies.

Our country is fortunate to have a broad spectrum of energy resource choices—coal, uranium, oil, gas, renewables, and energy conservation. A successful national energy strategy should provide sufficient flexibility for all of these alternatives to compete in the marketplace. The National Energy Security Act of 1991 does by providing a long-term, comprehensive, and consensus-based energy policy for the United States. I recommend it for your support.

MALCOLM WALLOP.

ADDITIONAL VIEWS OF SENATOR WIRTH

The development of comprehensive energy policy legislation is essential for realizing the long-term economic, environmental and security objectives of the United States. Central to the development of comprehensive energy policy must be a strategy to reduce our dependence on imported oil, on which we are now approximately 50 percent dependent. During consideration of this legislation, I argued that an energy policy for our future should reflect four basic concepts: (1) priority for energy efficiency and conservation; (2) environmental balance; (3) long-term thinking; and (4) the realization that alternative fuels, not increased conventional production, offer the best lasting solution.

CONSERVATION

As the Department of Energy reported in its interim report for the National Energy Strategy after months of nationwide hearings: "the loudest single message was to increase energy efficiency in every sector of energy use." Unfortunately, the Committee failed in its attempt to set meaningful energy efficiency targets for the most significant sector of our economy—transportation. The ambitious goal set forth in pending Senate legislation (S. 279) would save an estimated 2.5 million barrels of oil per day beginning in the year 2005. It is impossible to estimate the potential savings of the Corporate Average Fuel Economy (CAFE) standards provision of this bill. Based on the past record of the Department of Transportation in setting CAFE levels, the prospects for significant savings are not promising.

In a report prepared by the National Laboratories to support the National Energy Strategy, it was estimated that 2.5 million barrels of oil per day could be saved with cost-effective energy efficiency improvements in transportation. Yet the National Energy Strategy proposed nothing to improve the efficiency of the U.S. automobile and light truck fleet. This legislation does little more.

We can and must do better. Energy efficiency policy, good environmental policy and good economic policy. It must be the centerpiece of any national energy strategy.

THE ENVIRONMENT

Because world markets are now and will be for sometime saturated by oil (as they were in the 1980s), price will not be the force that shapes energy policy. Environmental security must be the driving consideration instead.

To a degree, it already is. The Clean Air Act Amendments of 1990 were in part energy policy. Similarly, reductions in carbon dioxide and other greenhouse gases should be a central objective of this legislation. In "Policy Implications of Greenhouse Warming,"

the National Academy of Sciences reported that: "greenhouse warming poses a potential threat sufficient to merit prompt responses." The Academy recommended that policymakers "make greenhouse warming a key factor in planning for our future energy supply mix."

Through weakening amendments adopted in this legislation, the Committee has failed to recognize the importance of integrating energy and environmental policy. Several sections of the bill will produce environmental benefits compared to other alternatives, such as efforts to increase the availability and use of natural gas and alternative fuels, energy efficiency provisions, etc. Unfortunately, the bill fails to make global warming and environmental protection a central focus, as it should.

LONG-TERM THINKING

Our energy policy must also take a longer view. We must get off the roller coaster of rising and falling prices, and dependence on imports. These play havoc with our economy. Instead, our goals must be to reduce oil consumption, and to develop real alternatives to oil use.

We cannot produce our way out of the current energy dilemma in which both our consumption of and dependence on oil is increasing. That course only temporarily boosts domestic production; it does nothing to reduce consumption, imports or environmentally-harmful emissions.

While the committee's consideration of energy legislation is a significant step in the decade long effort to craft a coherent national energy policy, much more work needs to be done to craft a truly comprehensive, forward-looking legislative vehicle.

THE ARCTIC REFUGE

The Committee's decision to offer for lease the coastal plain of the Arctic National Wildlife Refuge (ANWR) is most troubling. In my view, leasing in the Arctic Refuge inappropriately serves as the centerpiece of this legislation's oil strategy.

Advocates of Arctic Refuge leasing have argued that oil below the coastal plain may represent the last great oil find in the United States. In 1987, the Department of Interior estimated that there was a 19 percent chance of finding economically recoverable oil in the coastal plain. If oil were found, the Department of Interior estimated the mean economically recoverable resource at 3.2 billion barrels. Subsequent estimates have increased the chance and quantity of economically recoverable oil. The fact remains, however, that finding significant quantities of oil in the coastal plain is not at all certain.

Even if the most optimistic production estimates are realized, oil from the coastal plain would contribute precious little to our energy security. According to the Department of Energy, the United States consumed 17 million barrels of oil per day in 1990, of which 7-8 million barrels are imported. Any oil that might be recovered would not contribute to U.S. oil production until 12-15 years from now. That would boost production by approximately

600,000 barrels of oil per day at its peak, and soon decline to 400,000 barrels of oil per day.

The National Energy Strategy estimates production from enhanced oil recovery to increase by more than 3 million barrels of oil per day by 2005. Ironically, the Department of Energy acknowledged in personal communication that production from enhanced oil recovery and increased research and development would be even greater if no oil were produced from either the Arctic Refuge or offshore areas. The effect of Arctic Refuge production will be to encourage lower prices for a barrel of oil, reducing the amount of economically recoverable oil from existing fields.

Oil leasing in the Arctic Refuge is not a windfall for the federal treasury either. Assuming initial leases of \$100 per acre, initial revenues from bonus bids could be less than \$15 million dollars. Even if prices are much higher than \$100 an acre, which what has been paid for adjacent lands, If the State of Alaska sues the federal government over the revenue sharing provisions of the legislation, it could end up taking 90 percent of the revenues, leaving little for the Treasury. Royalties may produce more money 15 years from now—if oil is found. But if the State of Alaska is successful in challenging the bill's revenue sharing provisions, average royalty receipts to the Treasury could be no more than \$45 million per year.

Finally, and perhaps most importantly, the Committee rejected arguments about the environmental value of the Arctic Refuge. According to the U.S. Fish and Wildlife Service, Arctic Refuge is "the only conservation system unit that protects, in an undisturbed condition, the complete spectrum of arctic and subarctic ecosystems in North America." In my view, the coastal plain is the one of the wildest, least disturbed areas of wilderness left in the United States. It is home to spectacular wildlife that depend on the wilderness character of this refuge. The coastal plain is the biological heart of a living ecosystem. Once that ecosystem is disturbed it cannot be replaced. As has been demonstrated above, the oil it might produce can be replaced.

The search for new sources of oil in this country has continued unabated since oil was first discovered a century ago. Only in recent years have begun to understand fully the economic, security and environmental ramifications of our dependence on oil. Under any scenario, the U.S. is running out of oil. Our environmental systems are running out of time and tolerance. It is time to change course.

Of course we could squeeze some oil out of the Arctic Refuge, but why? It is chancy at best. Such an action does nothing to address the fundamental problem we face—dependence on petroleum. It does not produce a great deal of revenue for the United States. Finally, it represents a step backward in the national and international effort to protect the environment and chart a new course for the future.

Our energy needs can be met best by a strategy that emphasizes energy efficiency, the development of alternative fuels and utilization of cleaner burning fuels and existing hydrocarbon finds. These are the cornerstones of a comprehensive, long-term strategy for the

future of our country, and the environment. Drilling in the Arctic Refuge is irrelevant to such a strategy and I firmly reject it.

TIM WIRTH.

ADDITIONAL VIEWS OF SENATOR CONRAD

Since coming to the Senate, I have voted twice on the question of development of the Arctic National Wildlife Refuge. Few issues have been as difficult to decide. Both times, I have opposed opening ANWR. I remain opposed to ANWR development in the present bill.

In 1989, I voted with a number of my colleagues to defer opening ANWR pending an appraisal of a comprehensive energy plan. I opposed opening ANWR to production then, and I oppose it now, because ANWR should only be developed in the context of a comprehensive, long-term, aggressive national energy policy. This bill as reported is not yet such a plan.

It is true that this Committee has spent most of this session of Congress considering national energy strategy proposals. Despite these efforts, what we have before us is seriously deficient. For me, the linchpin of efforts to reduce our demand for foreign crude oil as increases in the Corporate Average Fuel Economy. It is a proven way to reduce oil consumption.

I am an original co-sponsor of Senator Bryan's bill to increase CAFE levels, and I have supported the bill on the floor of the Senate.

However, the testimony received by this committee raised very serious questions about the workability Senator Bryan's CAFE targets in the near-term. I strongly agree with Senator Bryan's long-term goal of achieving 40 mpg, but I believe that target should be for the year 2006. Time has elapsed since Senator Bryan first introduced his bill which raises further questions about the workability of the short-term goals in the bill. Finally, the economic condition of the American automobile industry has worsened and its ability to make massive changes in the short-term is questionable.

It was for these reasons that I supported Senator Johnston's proposal on CAFE standards. While I would have preferred a third-tier goal higher than 37 mpg, I thought this proposal was more workable than the Bryan bill, particularly with respect to the 1996 targets.

The Bush Administration, however, "stood on principle" and opposed specific targets for increased CAFE standards. The Administration's choice was an enormously irresponsible decision.

It was irresponsible because the time has come to be serious about energy policy. For most of the 1980s, we allowed "markets" to determine our energy policy. What was the result?

GROWING DEPENDENCE ON FOREIGN OIL

In 1990, imported oil accounted for nearly half of domestic oil use, the highest percentage since 1979. Without intervening action, import dependence will rise to 57% by the end of the century, and

65% by the year 2010. During 1990, payments for net oil imports totalled nearly \$55 billion.

DECLINING DOMESTIC PRODUCTION

The infrastructure of the domestic oil and gas industry virtually collapsed in the late 1980s. Drill rig utilization is only slightly above all-time lows. U.S. crude production—at 7.3 million barrels per day—is also nearing an all-time low.

INCREASED DEMAND FOR OIL

In the 1980s, the amount of oil consumed in the U.S. increased. Consumption has risen from 15 million barrels per day in 1983 to almost 17 million barrels per day in 1990.

During the same period, we threw away opportunities to develop alternative sources of energy. Funding for research, development and demonstration of alternative energy technologies was slashed by 89% between 1981 and 1990. The development of viable alternative fuels was severely impeded by the availability of cheap foreign oil. Finally, the nation's automakers have started to backslide on CAFE standards.

This is how we left 1980s. The picture made a pretty compelling case for the development of a serious national energy strategy. We were taking risks. We were jeopardizing our future national security through our import dependence.

Then, in 1990 we faced a Mideast crisis. We sent 500,000 troops half-way around the world to fight a war which was due in very large part to our reliance on Mideast oil.

It was our sixth post-World War II crisis over oil: 1951, 1956, 1967, 1973, 1979 and 1990.

What more proof do we need that we must take tough, bold action? We have been taught the hard way that the risks associated with import dependence may jeopardize our security.

We must adopt a comprehensive, balanced energy strategy. The axiom that we cannot produce or conserve our way out of our current energy crisis is true. We are irresponsible if we forever prohibit the development of what may be our largest domestic oil reserve if it seems likely that it can be developed in a responsible manner; we are also irresponsible if we refuse to adopt policies which will achieve fuel savings and diversification of our energy sources.

I will support many difficult policy choices in the context of adopting a national energy strategy. Unfortunately, the lack of serious CAFE standards, to me, signals that we are not yet serious about energy policy.

When Senator Bumpers offered his amendment to defer ANWR development in 1989, he argued that we should "hold ANWR hostage" until we received a serious plan from the Administration on meeting the energy challenges of the future. I fear that we still have had no reply to that request.

It is my hope that this package can be improved, particularly with the addition of strong, aggressive and workable CAFE standards, and a stronger alternative fuels provision. I will work with

the Committee, and the leadership, to improve this package as it moves through the Senate.

KENT CONRAD.

ADDITIONAL VIEWS OF SENATOR FOWLER

As a member of the Committee, I would encourage the Secretary to continue his efforts to utilize the resources of the Department to expand participation of low-income students in postsecondary science and mathematics education. I view the Special Programs for Students from Disadvantaged Backgrounds authorized under the Higher Education Act of 1965 (commonly referred to as the TRIO programs) as a logical focus of these efforts. To promote further cooperation between the TRIO programs and the Department, this section authorizes the Secretary to enter into one or more contracts with qualified entities to conduct programs which will supplement the TRIO programs and enhance their effectiveness in preparing disadvantaged students for careers requiring strong mathematics and science preparation.

TRIO programs—Educational Opportunity Centers, the Ronald B. McNair Post-baccalaureate Achievement Programs, Student Support Services, Talent Search, and Upward Bound—presently serve nearly 600,000 students from junior high through college. Two thirds of these young people and adults come from families whose taxable income falls below 150% of the poverty level, where neither parent has attained a baccalaureate.

Activities authorized by this section include but are not limited to development of materials to be used in any of the TRIO programs to encourage young people to consider careers in mathematics and science; long term and short term training programs—in DOE facilities and elsewhere—to enhance the mathematics and science awareness and preparation of TRIO counselors, teachers and administrators; internship programs and other opportunities for research for TRIO students at all levels at the DOE facilities and in the facilities of DOE suppliers; use of human and other resources in DOE to build the capacity within TRIO programs to enhance their effectiveness in mathematics and science instruction.

I certainly recognize that if the Department of Energy is to succeed in its efforts to promote participation by low-income students in postsecondary science and mathematics education it must develop strong cooperative relationships with organizations and institutions which have as their principle focus enhancing educational opportunities for low-income students at the postsecondary level. For that reason, the Committee limits eligible entities under this section to non-profit corporations, associations and institutions with special knowledge and experience in the education of low-income and first-generation students.

WYCHE FOWLER, Jr.

ADDITIONAL VIEWS OF SENATOR HATFIELD

During the Committee's consideration of this measure, I intended to offer two amendments which would have clarified the authority of the Bonneville Power Administration (BPA) to expend money for certain conservation and energy efficiency projects. The first amendment would clarify that the Secretary of the Interior could accept and spend money from BPA for authorized water conservation projects. The second amendment would clarify that both the Secretary of the Interior and the Secretary of the Army could accept and spend money from BPA for authorized energy efficiency projects (not to exceed in the aggregate 250 average MW) at existing dams.

Each of these amendments had as a simple goal, the elimination of a double appropriation by Congress. Currently, the respective Secretaries believe, in my opinion erroneously, that they can only spend money on these types of projects, if that money has been directly approved for their use in the appropriations process. The cost of the projects are then repaid over time with money from BPA, which is also approved in the appropriations process. My amendments would remove the duplication by allowing use of BPA funds directly and up front.

The merits of these amendments were obvious to almost everyone. First, they cause a real net reduction in Federal expenditures. Second, in times of increased scarcity of water in the Pacific Northwest, a real method to conserve this precious resource would be realized. Finally, additional amounts of a clean, renewable resource—hydroelectric energy—would be generated without any additional environmental consequence.

If all this is true, why you may ask did not Dudley Doright save the fair damsel in distress? Enter the villain. The Congressional Budget Office in its infinite zeal and stalwart defense of the budget process and Federal treasury concluded that my amendments created "direct spending" and would subject the bill to a point of order on the floor.

Assuming the CBO staff with the green eyeshades are correct, which I do not, we the Congress have created a budget process which results in Members being unable to offer amendments which save real dollars solely because CBO's scoring matrix spits out an erroneous conclusion that they cost money. To further illustrate my point, during the Committee's markup, a proposal was advanced to fill the Strategic Petroleum Reserve with donated oil. Regardless of the merits of the proposal, it died because CBO not only refused to score any savings despite the fact that it would have eliminated billions of dollars of direct appropriations, but also under one scenario actually concluded it would cost \$2.5 billion!

Suffice it to say, these examples have led me to the conclusion the budget process is seriously flawed if not broken. While I do not

intend to fix that process on this bill, I do intend to offer my amendments on the Senate floor. At that time, I will be prepared to defend them as entirely consistent with the objectives of this legislation, urgently needed by my region of the country, and as actually saving money. Your support will be appreciated.

MARK O. HATFIELD.

ADDITIONAL VIEWS OF SENATORS DOMENICI AND WIRTH

Subsection 11104(e) of the National Energy Security Act of 1991 directs the Secretary of the Department of Energy (DOE) to delegate to the Federal Energy Regulatory Commission (FERC) the authority to administer Section 3 of the Natural Gas Act with respect to authorizing the importation of natural gas; the subsection also requires the FERC to condition any import authorization to redress anticompetitive impacts on domestic natural gas producers.

This subsection was added by the Committee not because DOE or FERC lack the authority under existing law to redress anticompetitive impacts on domestic gas producers, but instead because they have failed to do so despite the recommendations of gas producers and others.

The problem this provision addresses arises because U.S. regulators use one system of rate design for U.S. pipelines, and Canadian regulators employ a different rate design system for their pipelines. Canada uses what is known as a fixed-variable rate design, whereas the United States uses a modified fixed-variable rate design system.

Now while neither system is intrinsically better than the other, they are substantially different, and those differences give a large—and artificial—competitive advantage to Canadian natural gas when competing for markets here in the United States. In large part due to this advantage, Canadian gas imports have doubled since 1986, capturing one-third of the growth in U.S. gas demand.

The artificial regulatory advantage for Canadian gas harms both U.S. producers and consumers of natural gas. Domestic producers, particularly independents, are hurt because they are required to compete against imported natural gas to which *our* regulatory system gives an artificial competitive advantage. Consumers are harmed because this situation distorts market signals and stifles competition, thereby pushing up gas prices. Moreover, over the longer-run, consumers will also suffer from the reduced domestic production and increased foreign dependence brought about by this situation.

In the past, efforts to remedy this problem have focused on what could be done to eliminate or offset this artificial competitive advantage. However, opponents of those efforts have prevented the formulation of any fair solution. In large part, the opponents have argued that the U.S.-Canada Free Trade Agreement (FTA) prevents U.S. regulators from taking action. However, it is absolutely clear from the FTA and the U.S. legislation implementing the FTA (neither of which are a Treaty) that the United States is not prevented from taking action to eliminate artificial regulatory advantages for Canadian natural gas.

The Act implementing the FTA does not amend the Natural Gas Act or the Natural Gas Policy Act of 1978. Moreover, Senate Report NO. 100-509 makes it perfectly clear that the authority and requirements contained in the Natural Gas Act and the Natural Gas Policy Act of 1978 are not amended even indirectly or inferentially. The relevant portion of the report is worth reproducing here:

* * * * *

Effect on Natural Gas Regulation

The Committee concurs with the description of the effect of the Agreement on natural gas regulatory matters contained in the Statement of Administrative Action as clarified further in this report.

The Committee is vitally concerned with the potential effect of the Agreement on natural gas trade between the two countries. Inasmuch as the Agreement is silent on natural gas issues, it is important to review the issues regarding natural gas trade that have arisen during the Committee's review of the proposed Agreement, and to clarify the Committee's understanding of the effect of the Agreement on those issues.

Section 3 of the Natural Gas Act (15 U.S.C. 717b) requires anyone seeking to export any natural gas from the United States to a foreign country, or to import any natural gas from a foreign country, to seek an order in advance authorizing the transaction. The order may include "such terms and conditions" as are determined to be "necessary or appropriate". Authority under this provision is vested in the Secretary of Energy by section 301(b) of the Department of Energy Organization Act (DOE Act) (42 U.S.C. 7151(b)). The Secretary of Energy has delegated his authority to perform that function to the Administrator of the Economic Regulatory Administration (ERA).

Sections 4 and 5 of the Natural Gas Act require rates and charges for interstate transportation of natural gas to be "just and reasonable" (15 U.S.C. 717c) and not "unduly discriminatory, or preferential" (15 U.S.C. 717d). Authority under these provisions is vested in the Federal Energy Regulatory Commission (FERC) by section 402(a) of the DOE Act (42 U.S.C. 7172(a)). The FERC has authority under the Natural Gas Act to prescribe rules and regulations governing all transportation rates and charges.

The Committee feels it is important to clarify that the Agreement does not in any way affect the ability of the U.S. regulatory authorities, including ERA and FERC, to impose appropriate terms and conditions on imports and exports of natural gas under the Natural Gas Act. The Committee sought, and received, assurances that nothing in the Agreement alters, supplants, or preempts the mandate of the Natural Gas Act or the Natural Gas Policy Act of 1978.

In a recent case involving imports of natural gas from Canada into the United States, the FERC ruled on the

proper ratemaking treatment of the cost of Canadian natural gas. The FERC required the importer to flow through the costs of Canadian gas to U.S. customers in the same manner in which domestic pipelines are required to flow through the costs of domestic gas to U.S. customers.

In that case, the FERC issued Opinion No. 256, which has become known as the "as-billed" decision. That Opinion required that the costs associated with production of Canadian and U.S. natural gas must be afforded equal rate treatment when interstate pipeline companies pass those costs on to consumers. (*Natural Gas Pipeline Company of America*, Opinion No. 256, issued December 8, 1986, 37 FERC 61,215; Opinion No. 256-A, issued May 27, 1987, 39 FERC 61,218). The FERC ruled that Natural may not recover the cost of its Canadian gas on an "as-billed" basis; that is, it could not include certain production-related costs in its demand charge that Canadian authorities had allowed the Canadian exporter to include in its demand charge. Instead, FERC required those production-related costs to be included in the commodity component of the pipeline's transportation rates, just as it requires those costs to be included in the commodity component of a pipeline's transportation rates in the case of domestic gas transportation.

Canadian officials objected to the FERC's decision, and sought to have it changed. The FERC refused. Officials on both sides of the border have acknowledged that the issue was raised during the agreement negotiations and both now acknowledge that the agreement does not affect the decision.

As Chairman of the Committee, Senator Johnston wrote a letter on March 28, 1988, to the Honorable Marcel Masse, the Canadian Minister for Energy, Mines and Resources, asking for the Canadian interpretation of the effect of the Agreement on FERC Opinion No. 256. That letter asked, "Is it the Canadian Government's position that, upon approval of the Agreement by the United States and Canada, FERC Opinion No. 526 is overturned?"

The Canadian Ambassador to the United States, the Honorable Allan Gotlieb, replied to that letter on April 13, 1988, and stated:

The Canadian Government does not view FERC's as-billed decision as being inconsistent with or affected by the Free Trade Agreement. I can assure you that the Canadian Government has no plans to use the agreement to overturn FERC's existing as-billed decision (Opinion 256).

The Canadian Government had a series of consultations in 1987 with the U.S. Department of Energy on the as-billed decision, which provided a useful forum for discussing the Canadian concerns and the United States Government's rationale for its support for FERC's decision. In the event of

future energy regulatory concerns—on either side of the border—article 905 of the agreement provides for similar consultations. We share the United States Administration's view that this provision will be helpful in avoiding future conflicts on regulatory issues.

In Testimony before the Committee on April 19, 1988, DOE Deputy Secretary Martin stated in response to a question from Senator Bingaman, "Senator, from day one of this Agreement we have said that we felt 256 was consistent with the Free Trade Agreement. I think Ambassador Gotlieb is the official word of Canada, and I think it is encouraging that he would say that". (Transcript, page 35) When queried whether it would be possible to use Article 905 of the Agreement to challenge future decisions similar to Opinion No. 256, Mr. Robert Reinstein of the USTR's office stated:

Clearly that [Article 905] applies to future actions, and it provides for consultation. It does not provide for change in any regulation. It opens up an avenue of enhanced communication in the complex area of energy regulation. That is the only provision in the Agreement, we believe, that has any bearing on decisions of the kind that Opinion 256 is, and it does not apply to Opinion 256 because it is a past action. In fact, there were already consultations on it. . . .

Well, in theory that could challenge it, but in practice it is not inconsistent with any provision of the Agreement, nor was it something that the United States agreed to change, nor did they have any reason to expect that it would be changed.

We frankly think that there would be no result if they did bring a case. In theory they can challenge a regulation that is on the books, but in practice it would not be successful. (Transcript, pages 36 and 37)

The FERC Chairman, the Honorable Martha O. Hesse, summed up FERC's understanding of the effect of the Agreement in written testimony submitted for the Committee's hearing record. She stated:

Inasmuch as the principal statutes under which the Commission operates already mandate nondiscriminatory treatment, the Free Trade Agreement does not in any way alter, supplant, or preempt that mandate. Similarly, since the Commission's policy, consistent with these statutory mandates, is one of nondiscriminatory treatment, we do not foresee any significant alteration or impact on the Commission's decisional processes in the future.

* * * * *

U.S. Congress. Senate. Committees on Finance; Agriculture, Nutrition, and Forestry; Energy and Natural Resources; and Government Affairs. Approving and Implementing the United States-Canada Free Trade Agreement. 100th Congress, 2d Session. Report No. 100-509: pp. 60-63.

The explicit recognition in the implementing Act's legislative history of the unaffected status of FERC Opinion No. 256 further buttresses this view. The Report goes on at length to make it clear that the Free Trade Agreement does not affect FERC Opinion No. 256. It quotes Canadian Ambassador Gotlieb that "The Canadian Government does not view FERC's as-billed decision as being inconsistent with or affected by the Free Trade Agreement," and it notes that DOE Deputy Secretary Martin concurred in that assessment in testimony before the Senate Committee on Energy and Natural Resources. If the Act implementing the U.S.-Canada Free Trade Agreement did prevent FERC from addressing anticompetitive or discriminatory imports, how could these authorities assert that Opinion No. 256 remained in effect despite the enactment of the implementing Act?

In this connection, it should be noted that while Opinion No. 256 applies only to sales gas (both gathering and transmission costs), its principle or no artificial regulatory advantage is equally and fully applicable to transportation gas. Failure to make the principle embodied in Opinion No. 256 apply to transportation gas opens a major loophole by which the spirit of Opinion No. 256 can be, and is being, eviscerated; and that allows anticompetitive and discriminatory situations to develop which must be addressed.

FERC Chairman Allday acknowledged this problem in his response to a written question posed in follow-up to the Senate Energy Committee's May 3, 1990 hearing on the Northeast gas situation. In this response he stated that:

As a matter of policy, the cardinal principle of Opinion No. 256, that foreign and domestic gas should compete on a level playing field with respect to marketing gas in the United States, should apply to foreign gas transported by a domestic pipeline as well as to foreign gas sold by a domestic pipeline. If this principle is not applied to the transportation of foreign gas, Canadian gas could gain a competitive advantage over domestic gas if the interstate pipeline provides only transportation, but not sale for resale, service.

Clearly, it is not in the public interest to allow the marketplace to be artificially distorted—nor is it in the public interest to see the U.S. regulatory process and principles evaded—simply due to a failure by FERC to extend to transportation gas the obviously applicable principle of no artificial regulatory advantage. DOE and FERC can under existing law take appropriate action to insure that gas is not imported from Canada under terms or conditions which are preferential, anticompetitive or unduly discriminatory. Competition on a level playing field is the central concept of the Commission's open access transportation program, and without it the program would be unfair to both producers and consumers of natural gas.

In addition, a joint Department of Energy and U.S. Trade Representative staff analysis of the energy provisions of the FTA states that:

[A]ny Agreement that made contracts involving energy sales across the border inherently more privileged under regulation than contracts for sales within either country would be viewed as unreasonable by producers or consumers in both countries. A contract for gas sales from Alberta to New York should not be treated more favorably than, on the one hand, a contract for sales from Texas to New York or, on the other hand, a contract for sales from Alberta to Toronto. Nondiscrimination in energy markets means just that—no special treatment, favorable or unfavorable, for any commodity or firm based on nationality.

"Analysis of Chapter Nine of the U.S.-Canada Free-Trade Agreement, Concerning Trade in Energy." Prepared by staff of the U.S. Department of Energy and U.S. Trade Representative. May 1988: p. 17.

Thus the U.S.-Canada Free Trade Agreement and the Act implementing the FTA along with its accompanying legislative history, make it crystal clear that the FTA does not prevent, limit or excuse the FERC and the DOE from exercising their authority under the Natural Gas Act and the Natural Gas Policy Act of 1978 to insure that gas is not imported from Canada under terms or conditions which are preferential, anticompetitive or unduly discriminatory.

We strongly believe that Canadian-produced gas should not be allowed to receive an artificial competitive advantage, and that FERC and DOE are both *obligated* by law to provide a level playing field for both U.S.-produced and Canadian-produced natural gas.

It may be argued by some that requiring the Commission to redress "anticompetitive" impacts on U.S. gas producers would require the Commission to go beyond its authority under the Natural Gas Act and the Natural Gas Policy Act of 1978; however, that argument is faulty for two reasons. First, the Commission must take into account the Federal antitrust laws in reaching its decisions. This is true in all matters except where Congress has explicitly said otherwise. Second, the Commission itself has formally stated that it has the statutory authority to address "anticompetitive" situations if found to exist. For example, in FERC Opinion No. 357, the Commission stated:

We advise the parties that any domestic interstate pipeline which desires to modify its existing rate design may file an application with the Commission under section 4 of the NGA to do so. Moreover, regarding the redesigning of the rate structure of domestic pipelines, the Commission has issued a policy statement initiating a process whereby our rate design process and policies are being examined in-depth in the context of individual rate proceedings before the Commission. Those proceedings are the appropriate forums within our jurisdiction for addressing the concerns voiced by IPAA. If IPAA or others raise the issue of a *potential anticompetitive preference for Canadian*

versus domestic gas supply in those proceedings, all interested parties and the ALJ's shall thoroughly examine the issue and devise and consider appropriate and effective solutions. Together with the other objectives in the Rate Design Policy Statement, those solutions will ensure that both sales and transportation of Canadian and U.S. domestic gas are treated in a fair and nondiscriminatory manner. (Emphasis supplied.)

Finally, with respect to the implementation of this subsection, FERC must take action in all pending and future matters before it in order to insure that the requirements be met. The Commission is not free to act only upon complaint; nor is it free not to act.

PETE V. DOMENICI.

TIM WIRTH.

ADDITIONAL VIEWS OF SENATOR MURKOWSKI

I endorse the Committee's action in reporting the National Energy Security Act of 1991, and strongly support the Committee's decision to authorize oil and gas leasing on the coastal plain of the Arctic National Wildlife Refuge (ANWR). I do have reservations, however, about two provisions and one omission of this legislation.

The revenue distribution provision would divide all revenues from oil and gas leasing on the coastal plain equally between the State of Alaska and federal government. In my view, this provision violates the "compact" which was created between the State of Alaska and the United States when Alaska joined the Union.

The Alaska Statehood Act amended the Mineral Lands leasing Act to ensure that Alaska received 90 percent of the revenues from mineral leases on federal lands in Alaska. Legislative history of the Alaska Statehood Act indicates that the 90 percent revenue share was a critical component of that legislation. It was certainly an important factor to the citizens of Alaska when they voted to become the 49th state under the provisions of the Alaska Statehood Act.

The second provision of concern contains the ANWR crude oil export restrictions. Under current law, any crude oil produced on the Coastal Plain of ANWR would be subject to at least two existing prohibitions on the export of Alaska crude oil. Enacting an unnecessary additional prohibition amounts to nothing more than flaunting of political power.

Finally, I am concerned that the committee did not fully address the social, cultural, and institutional impacts on rural Alaska populations or the increased burden placed on rural governmental infrastructure as a result of ANWR development. It is my hope that as ANWR leasing receives further consideration within the Congress, attention will be given to the need for some form of impact assistance to the affected governments and institutions ANWR of rural Alaska.

FRANK H. MURKOWSKI.

MINORITY VIEWS OF SENATOR BRADLEY

When President Bush introduced in National Energy Strategy, I criticized the plan as an unbalanced program premised on wishful thinking. As the Energy Committee's Bill closely resembles the Administration's plan, I cannot suddenly come to an alternative viewpoint. The Energy Committee Bill will do little to reduce oil dependence or reorient our economy to a more sustainable future. On the contrary, the bill's centerpiece remains a promise to despoil one of the few remaining undisurbed ecosystems on the planet. This is all done in the search for marginal oil supplies that might be available a decade hence.

From the outset, the Committee foreswore a discussion of the issue most relevant to energy policy—price. Although we in Congress are adamant about the need for new energy policy, it's hard to convince consumers of the need to conserve or to begin an effort to reorient our economy when the real price paid for oil hasn't been lower in forty years.

In its attempts to exploit a perceived public anxiety about a failed or inadequate energy policy, the Energy Committee has reported a "comprehensive bill" that is a grab bag of ideas. Much of the bill can be criticized as a business-as-usual approach, with little in the way of new thinking. Drill for oil, even where the environment is unique and fragile, bail out a uranium enrichment industry that's not competitive, create extensive energy efficiency targets but withhold the needed "teeth", push for federal subsidies for what should be private sector research, and the list goes on. Notwithstanding some sincere efforts on the part of the Chairman, who has been fair throughout the process in attempting to achieve agreement on highly controversial issues, this bill only offers little impetus for the structural changes in our economy necessary to reduce our dependence on oil.

In some areas, unfortunately, the Committee Bill is clearly worse than the Administration's proposal. For example, the Committee Bill contains broad and ambiguous language that seeks to undermine continued access to low-cost (and reliable) Canadian gas imports. At its worst, the language is an unsubtle effort to restrict consumer choice. At its best, the amendment is a gratuitous slight at a valuable trade partner. In either case, there is no need or value in the Committee amendment.

A similar criticism can be made for the Committee's approach to the Clean Air Act and the renovation of existing power plants. The Committee's "WepCo" language, Title XIV, creates an enormous loophole in our environmental laws. The Committee language exempts any reconstructed power plants from New Source Performance Standards, provided that the new investment in the old plant does not exceed 50% of the cost of a replacement plant. On its face, it appears that this provision could allow a utility to bulldoze and

replace much of its old plant, and still avoid otherwise required environmental improvements. The Committee language adds a clause that states that this amendment does not authorize an increase in pollution, even though that is almost surely the outcome.

In most of the bill's titles, critical questions remain. Do we know how the gas industry will use the expedited pipeline certification procedures contained in Title XI? What are the implications of the multi-billion dollar payoff to a handful of states embodied in Title XII, concerning the Outer Continental Shelf? Is reform of the Public Utility Holding Company Act without restrictions on utility self-dealings and provisions for transmission access better for consumers than no reform at all? The Committee language appears to hold many opportunities for private mischief at public expense.

I urge my colleagues to take a very close look at this bill. While the bill is truly "comprehensive" in that it touches on most of the elements of energy in our economy, it is not balanced. The energy conservation measures are weak or ineffective. The exploitation of the Coastal Plains of ANWR is explicit. Some of my colleagues will hail this bill as a solution. In my view, it's far from that. Rather, it reads like an industry wish list that in numerous cases is contrary to the public interest.

BILL BRADLEY.

MINORITY VIEWS OF SENATOR WELLSTONE

Energy policy is closely linked to virtually all of our national priorities—to our economic prosperity and international competitiveness, to our national security, to our public health, and above all to the future survival of our life-support systems on this planet.

We are engaged in an historic, vitally important policy debate. Will we heed the signals of global environmental crisis or not? The nation needs a far-reaching, forward-looking energy strategy. It is critically important that we get it right in this bill.

We must face up to the absolute necessity to begin immediately a transition to a sustainable energy future that safeguards the health of the planet by realizing our energy efficiency potential and by shifting to renewable energy sources. Adopting such a strategy would mark the beginning of a serious effort to halt the greenhouse gas buildup in the atmosphere. We must start now. We simply cannot continue the mad planetary experiment we've embarked upon.

According to Dr. John Firor, Director of Advanced Studies for the National Center for Atmospheric Research, "A growing scientific consensus exists that sometime in the next century, the surface of the earth will become warmer than it has been at any time in human history." Dr. Firor is clearly not alone. The international groups of scientists convened under the auspices of the Intergovernmental Panel on Climate Change agreed that climate change is not a myth. They found that on its present course the earth is very likely to become significantly warmer in the decades ahead.

This warming "could seriously disrupt the weather, altering rain and snow patterns, shifting growing seasons, and possibly disturbing air and ocean currents enough to produce more intense and frequent hurricanes and tornadoes than plague us now. The melting of land glaciers and the gradual thermal expansion of seawater could raise sea levels enough to inundate coasts and make today's shoreline maps relics by the third quarter of the next century," according to the World Resources Institute. "If the world heats up as much as some scientists now fear, the change will alter virtually every facet of contemporary life, playing havoc with farming, forestry, fishing, transportation, water supplies, and energy," WRI continues.

In 1988, in response to the skeptics of climate change, Congress asked the National Academy of Sciences to prepare a report. A few weeks ago they replied. The National Academy of Sciences warns us—again—that we must act now if we're going to head off potentially catastrophic ecological changes in the next century.

The combustion of fossil fuels is the chief cause of this human-induced climate change. The central response to this crisis, then, must be to reduce our use of fossil fuels. To accomplish this task we must become much more energy efficient and develop and use

less polluting fuels, particularly those which can be produced and burned with nearly no net emission of carbon dioxide.

We have a fundamental choice to make in devising a national energy strategy. We can continue to go down the fossil fuel and nuclear path we are on, and perhaps smooth it out a bit by raising efficiency standards and trying to mitigate some of the negative consequences side-effects such as air pollution and nuclear proliferation. Or we can pursue a different path that takes us in the long-term direction I believe we must go—the direction of maximum energy efficiency and conservation, of temporarily shifting to transition fuels that do not exacerbate the carbon dioxide buildup, and of serious development of new, renewable supplies of energy that will meet our need for the next century.

We cannot afford to postpone this choice any longer. If we are not well down that road in the next 10 to 20 years, our chances of making the transition may be lost. Irreversible processes may have begun that will destroy our planetary systems no matter what we try to do later.

Besides the threat of global climate change, there are other important reasons for seeking a coherent, long-range national energy policy to shape and manage the transition to a sustainable energy future. Fossil fuel use continues to be the major source of air and water pollution, with its attendant costs for public health and the environment. Our nation's dependence on foreign oil threatens our national security. As remaining world oil reserves become more and more concentrated in the Middle East, our vulnerability to supply disruptions and price fluctuations will become increasingly untenable. Unavoidable accidental releases of fossil fuels and radioactivity threaten the health of the public and the environment. As oil is recovered from more remote and environmentally sensitive areas and as more nuclear power plants are built these threats to the public and the environment will escalate.

Technologies are available today, or can be developed, that would provide new energy supplies or energy savings at considerably less cost than the development of conventional fossil fuels and nuclear energy. We should give first priority to energy conservation, efficiency, and development of renewable energy sources such as solar, wind, geothermal, and ethanol and other fuels derived from biomass.

By moving these technologies to first priority status in a national energy policy, we could sharply reduce the volume of carbon dioxide released into the atmosphere in coming decades to avoid or sharply mitigate global warming and other potentially devastating ecological changes.

This legislation, unfortunately, does not take us in the right direction. It will not give us national energy security; the Department of Energy projects that oil imports will continue to increase. It fails to give priority to energy efficiency and conservation. It ignores the problem of global warming and undermines other environmental safeguards. By promoting continued dependence on fossil fuels and increased use of coal, the bill will exacerbate climate change. It simply will not put us on a sustainable energy course for the future.

In sum, I believe this bill is so flawed in its basic premises and approach that it cannot stand as a viable framework for U.S. energy policy in the 1990s and beyond.

In addition to my objection to the general direction of this legislation, I have serious reservations about many of its specific provisions, including those that:

- allow the Department of Transportation to establish future fuel economy standards, the same agency that vigorously opposes any increase in the standards and has, in fact, reduced the standard twice in the past decade;
- open the Arctic National Wildlife Refuge—the last undisturbed Arctic ecosystem in North America—to oil and gas development;
- accelerate the licensing of nuclear power plants by eliminating key public participation provisions and insulating the Nuclear Regulatory Commissions' decisions from judicial review;
- authorize multi-billion dollar nuclear energy and synfuels demonstration projects, under the rubric of advancing new nuclear reactor design and "clean" coal technologies;
- advance deregulation of the electric utility industry that could open the way to monopolistic practices in the wholesale generation of electricity, undermine current state efforts to achieve "least-cost" electric utility service, and encourage construction of unnecessary generating capacity.
- "streamline" authority for gas pipeline construction by restricting the rights of citizens to participate in public hearings, running roughshod over the rights of property owners, and eliminating environmental review;
- transfer regulation of perhaps half of all hydroelectric projects to the states without adequate environmental safeguards or assurances from the state that they are prepared to assume responsibility for licensing;
- weaken the Clean Air Act by allowing reconstruction of coal-burning power plants that do not meet new source performance standards; and
- cancel over \$10 billion in debt owed to the U.S. Treasury by the nuclear industry for past uranium enrichment services and subsidize industry costs for cleaning up uranium processing sites.

CORPORATE AVERAGE FUEL ECONOMY STANDARDS

The key energy security issue in this bill is fuel efficiency standards for cars and trucks. With 5% of the global population, the United States consumes 27% of the oil supply and two-thirds of that goes to transportation. Our domestic production, based on a relatively meager store of 4% of the world's oil reserves, has been declining inexorably for twenty years. Imports now constitute half the oil we consume, leaving the American economy acutely vulnerable to supply disruptions and price fluctuations.

In 1975, despite their intense protestations of technological infeasibility and warnings of passenger safety disaster, auto manufacturers were required by Congress to double their corporate average fuel economy in ten years, from about 13 MPG to 27.5 MPG. That

first CAFE law proved remarkably effective in moderating America's oil imports and in keeping America's auto manufacturers competitive. Soon after the pressure of the original CAFE law was removed, however, the fuel economy of passenger cars began to backslide, peaking in 1988 at 28.8 MPG and declining to 28.1 MPG in 1990. The obvious reason is that manufacturers have opted for the greater profitability of more powerful "luxury" cars. For instance, Ford is reported to make a \$10,000 profit on every \$30,000 Lincoln luxury car and only \$1,000 profit on every \$10,000 Ford Escort.

This year, with the manufacturers again resisting with every weapon of persuasion in their formidable arsenals, their case fell on sympathetic ears in our Committee. Three proposals were considered. The overall passenger car averages corresponding to the proposed CAFE standards in these three measures are summarized in the following table:

[In miles per gallon]

Committee bill	1996 DOT discretion	2001 DOT discretion	2006 DOT discretion
Johnston proposal.....	30.2	34.0	37.0
Bryan bill	34.6	40.3	(¹)

¹ None specified.

THE COMMITTEE BILL PROPOSAL

The legislation reported by the Committee does not contain any significant programs to increase automobile fuel efficiency. It does not mandate specific values for new fuel efficiency standards. Instead, it proposes to leave it to the Department of Transportation to decide whether and how much to increase fuel efficiency standards for cars and light trucks—the same Department of Transportation that vigorously opposed any increase in the standards and has, in fact, reduced the standard twice in the past decade.

What is more, the Committee bill adds additional obstacles to future increases in fuel efficiency. For example, it requires that "feasible" fuel economy increases be artificially limited to those based on design and technology changes that maintain the "performance" of the nation's auto fleet at 1990 levels. This locks in the patterns the automakers have recently followed of marketing muscle cars which favor acceleration and top-speed performance over efficiency.

The Committee bill also incorporates provisions that will artificially boost manufacturers Corporate Average Fuel Economy Rating (CAFE), at the expense of real energy efficiency. For example, the bill includes a CAFE credit for a very broadly defined "small" car equipped with airbags. The National Highway Traffic Safety Administration has testified that 90 percent of all cars will have airbags by model year 1995, a year before the deadline in the bill. Thus, the bill would provide the industry a credit against efficiency improvements for something the industry plans to do anyway.

The bill also allows companies to carry forward excess CAFE credits for exceeding the current 27.5 MPG standard in years prior

to 1996. These credits, which can be used for up to three years, will reduce the pace of efficiency increases by permitting delayed adoption of improved technology by automakers.

THE CHAIRMAN'S AMENDMENT

The second proposal was introduced by Chairman Johnston during the mark-up. It mandates very modest CAFE percentage increases over the 1990 level of 28.1 MPG: 7.5% by 1996, 20.9% by 2001 and 31.8% by 2006. According to the Committee's staff economist, these are the "maximum feasible" increases in fuel economy, consistent with certain arbitrarily-designated constraints, including maintaining the size and performance of the passenger car fleet at the 1990 levels.

The credibility of this proposal rests on the assertion that these are indeed "maximum feasible" CAFE increases. But this assertion seems inconsistent with other information and analyses from reputable experts in this field. On the basis of such comparisons, the Johnston numbers seem far too low, especially in the post-2000 period. Unfortunately, the proposal was introduced very late, during the mark-up after the committee hearings had been completed, so there was no opportunity for the technical bases for the claim that these are "maximum feasible" increases to be discussed and debated by knowledgeable experts before the Committee.

If this proposal is introduced as an amendment on the Senate floor, I believe it would be inappropriate for the Senate to support it. At the very least, what the Committee needed and what a deliberative body like the Senate should require before accepting any such crucial numbers in important legislation is a hearing in which experts in the field discuss and debate in depth the validity of alleged limits to what is feasible for the fuel economy of passenger cars in the post-2000 period.

Furthermore, there are a number of factors that make it questionable whether even these very modest fuel economy improvements would actually be achieved if the Johnston proposal were adopted. For example, the proposal provides the Department of Transportation with the authority to roll back the prescribed levels by 1 MPG in 1996, 2 MPG in 2001 and 3 MPG in 2006. And, like the Committee bill, the proposal would give CAFE credits to manufacturers for including airbags in small cars. By 2001, this airbag credit is likely to amount to between .5 MPG and 1 MPG, depending on the manufacturer.

Another important factor that will result in a decrease in the actual fuel economy achieved, for the Johnston proposal and the other proposals as well, is the CAFE credit for alternative fuel vehicles. As a strong advocate of the use of domestically-produced, renewable alternative fuels I very much support such credits. In order to promote the production of vehicles powered by electricity or alternative fuels such as ethanol, compressed natural gas (CNG) and methanol, incentives have for some time been built into CAFE legislation by assigning such vehicles artificially-inflated MPG ratings for purposes of calculating fleet fuel economy averages. These inflated ratings depend on the fuel and on whether the vehicle can operate only on the alternative fuel (a "dedicated vehicle") or on

either the alternative fuel or gasoline (a "flexi-fuel vehicle"); they tend to be very high.

For example, the following table lists the inflated MPG-ratings assigned for CAFE purposes to several vehicles whose "TRUE-MPG" (the miles they go on an amount of fuel or electricity equal in energy content to one gallon of gasoline) is 30 MPG:

Power source	Dedicated vehicle	Flexi-fuel vehicle
Methanol	105	46.7
Ethanol	145	49.7
CNG	200	52.2
Electric	137	49.2

Under current law, there is a maximum amount of CAFE credit, 1.2 MPG, that a manufacturer can receive for flexi-fuel vehicles. There is no cap on the amount of credit a manufacturer can receive for dedicated fuel vehicles. The Office of Technology Assessment has estimated that by 2001 automakers will be receiving on the order of 2 MPG in alternative fuel CAFE credits. Of course, this depends on assumptions about the market penetration of alternative fuel vehicles.

The net effect of all these factors makes it possible that if the Johnston proposal were adopted, the actual average new fleet fuel economy required for passenger cars ten years from now could be considerably less than the nominal 34 MPG, ostensibly mandated for 2001 by the Johnston proposal. It could be as little as:

[In miles per gallon]	
Nominal Johnston CAFE in 2001	34
DOT Discretion	-2
Airbag Credit	-5
Alternative Fuel Credit	-2
Actual CAFE in 2001	29.5

Given that the CAFE average for new cars in 1988 was 28.8 MPG, the Johnston standard could represent less than a one mile-per-gallon increase required in the next ten years. That hardly is a signal that Congress is pushing Detroit to the limit in fuel efficiency. We can and should do better. Automobile energy efficiency is good energy policy, good environmental policy and good economic policy. Pushing the automakers to the real maximum feasible limit should be a centerpiece of any national energy strategy. That is why I supported the Bryan-Gorton bill in Committee and why I intend to support it when it comes to a vote on the Senate floor.

It should be noted that the Bryan-Gorton fuel efficiency standards will also be decreased by CAFE credits for alternative fuels and S. 279, the Bryan-Gorton bill, also allows the Secretary of Transportation discretionary authority, after a rule-making proceeding, to reduce the mandated standards. For example, the nominal 2001 CAFE standard in that bill, which is 40% higher than the 1988 average, could be reduced by the Secretary to as low as a 30% increase over 1988. Thus, the 40.3 MPG nominal overall passenger fleet average in 2001, decried by the auto industry as outrageously high, could in the hands of a sympathetic Secretary of Transporta-

tion be lowered as far as 37.4 MPG. And with the anticipated 2 MPG in alternative fuel credit, the actual 2001 fuel economy requirement if S. 279 is adopted could be as low as 35.4 MPG, a 23% increase over the 1988 average, instead of the nominal 40%.

THE POTENTIAL FOR THE FUTURE

In my view, the future of the American automobile industry will depend on our manufacturers becoming the world's leaders in energy efficiency. Just as the original CAFE legislation kept American automakers competitive by pressing them to keep pace in fuel economy, the next round of CAFE must be structured so that when there is a quantum leap in fuel economy in the next few years through the introduction of advanced new technologies, our auto industry will be in the vanguard, not left behind.

Some manufacturers have already developed high MPG vehicles and are positioning themselves to put them on the market soon. A very promising example is the General Motors "Impact," scheduled to go into production in 1994 and authoritatively reported to achieve greater than 80 MPG either as an electric vehicle or power by an efficient gasoline engine. Several foreign manufacturers have also produced very high MPG prototypes.

The question I have is simple. Will the auto makers bring these cars to the market-place in large numbers? Will we see GM, Ford and Chrysler making a serious commitment to producing and selling high efficiency vehicles without a CAFE standard?

Based on their history and recent public statements, I fear they will not—Congress will have to mandate it through CAFE standards.

ALTERNATIVELY FUELED AND ADVANCED TECHNOLOGY VEHICLES

During Committee consideration of this provision, I circulated an amendment that would have required at least 10 percent of the vehicles manufactured in 2001 be a mix of electric vehicles, dedicated alternative fuel vehicles and high efficiency vehicles. After defeat of the Bryan and Johnston amendments, I withdrew this amendment from further consideration. However, I continue to believe it should be part of our future energy strategy.

Minnesota's legislature has been seriously moving towards making ethanol-based fuels the exclusive choice for automobiles in the state. Other states are making similar commitments to ethanol and other alternative fuels, and other provisions of the Committee bill require the federal government, state governments, and private fleets to begin using alternative fueled vehicles in large numbers.

Ethanol, methanol, natural gas, and possibly in the future hydrogen, have considerable potential to meet domestic fuel needs. Congress and state legislatures are putting public policy—and significant public funding—behind efforts to bring these fuels on-line. Through the alternative fuel provisions of this bill, state and federal tax credits, loans programs, and other incentives we are boosting the production of alternative fuels.

A 10% amendment would push the production of dedicated alternative fuel vehicles. The amendment also would promote on electric vehicles. I believe that electric and dedicated vehicles have considerable potential to meet transportation needs, particularly in

urban areas. Most of our driving today is for urban commuting, and most of those commuting trips involve one person driving a five or six passenger car. In the urban commuting market, these vehicles make a lot of sense.

Under the provisions of the clean air act, California has already committed to requiring that 5% of the automobiles purchased in the state be electric vehicles by 2001. By 2003, California will raise this requirement to 10%. Several other states are considering adopting similar requirements.

Finally, in proposing this amendment, I am interested in promoting higher efficiency automobiles. There are numerous prototype automobiles which have been developed by the auto manufacturers. As noted previously, General Motors is developing the Impact which could take GM into the forefront of automotive efficiency technology. Other manufacturers have similar vehicles, nearly all of which are rated at fuel efficiencies greater than 70 mpg.

The question I have is simple. Will the auto makers bring these cars to the market-place? Will we see GM, Ford, and Chrysler making a serious commitment to producing and selling alternatively fueled vehicles, electric vehicles and high efficiency vehicles? Many of the other programs we have launched are predicted upon their doing so.

Private fleet owners have complained about the fleet provisions of this legislation, for example, because of their uncertainty about whether such vehicles will be available. These fleet owners have also pointed out the importance for such vehicles to be available from major manufacturers, carry major manufacturers warranties, and be reasonably priced.

We have also committed federal and state governments to major purchases of such vehicles. If they are not available—or if Detroit waits until demand forces them to produce these vehicles, these vehicles are likely to be expensive and difficult to obtain.

Given the risk-aversion which the auto industry has demonstrated on these issues, I can only believe that it is very likely that without a specific production requirement there could be serious problems procuring alternatively fueled vehicles, electric vehicles and high efficiency vehicles in the year 2001 and beyond.

This proposal would close the loop of programs supporting a transition in our automobile industry. In addition to specific CAFE requirements, it is a missing link in our efforts. We are making major investments to produce alternative fuels, and to develop a market for alternative fuels. Now, we need to make certain that American automobile companies produce the vehicles that use these fuels and meet the market demands for new technology vehicles.

SAFETY AND JOBS

Opponents of federal CAFE standards have raised the issue of automobile safety, arguing that more efficient cars will be more hazardous. They have also argued that CAFE standards will cost workers jobs. I do not find either argument persuasive.

The history of efficiency and safety since CAFE standards were first introduced clearly demonstrates that they are not incompati-

ble. Over this period, cars have become dramatically more efficient and significantly safer. There is well-documented evidence that we can continue to improve both safety and efficiency under the Bryan-Gorton CAFE requirements.

The argument about job losses is not only wrong from an historical perspective, but it violates economic sensibility, as well. If American industry is going to survive and prosper in an international market-place, it must be competitive. Today, American automobile makers lag behind their foreign competitors in fuel efficiency. While the temporary oil glut we are experiencing may dampen the effect of this gap, there is ample evidence that today's oil glut is not likely to be long-lived.

When we return to higher prices and tighter supplies of oil, American manufacturers could again be at a competitive disadvantage, if they fail to pursue vigorously advanced fuel efficiency technologies. Adopting the Bryan-Gorton CAFE requirements will ensure that American automobile manufacturers make the continued progress which is essential to their long-term competitiveness and the job security of American auto workers.

ARCTIC NATIONAL WILDLIFE REFUGE

DRILLING FOR OIL IN THE ARCTIC REFUGE

During Committee action on this legislation, I voted to strike the entire Title on oil and gas leasing in the Arctic National Wildlife Refuge. I voted to strike for several reasons.

First, even if we do find oil in the refuge, it won't give us energy security or do anything significant to solve our basic energy problems. The problem isn't that we don't have enough oil; it's that we use too much.

Drilling ANWR will only feed the illusion that we can continue our addiction to oil, that we can continue to use twice as much oil per capita and per dollar of production as our competitors in Europe, and 2½ times as much as Japan.

It also ignores the most important environmental problem the world faces—the buildup of CO₂ in the global atmosphere. It's morally as well as scientifically irresponsible to pretend this problem doesn't exist.

Second, if we want to do something responsible about fossil fuel dependency, there are much better places to drill for oil than in Alaska.

- We can “drill for oil” in our cars by enacting a higher CAFE standard—in fact, according to the American Council for an Energy Efficient Economy, if S. 279 were implemented it would give us roughly ten times as much oil supply as the projected finds in ANWR. Even adding 1 or 2 mpg could give us the equivalent of ANWR's oil in savings.
- We can “drill for oil” in our homes, and offices, and factories with energy conservation and efficiency technologies that already exist.
- We can develop alternative fuels like ethanol that don't produce a net increase of CO₂ in the atmosphere.

Third, we can do all these things at much less cost than producing ANWR oil. It's outrageous that we are being asked to pay for energy programs by destroying the Arctic Refuge.

Fourth, the Arctic National Wildlife Refuge is far too precious a resource to destroy. The Fish & Wildlife Service has called it "the only protected area containing a complete spectrum of arctic ecosystems in North America." Yet we don't even have a full and adequate environmental impact statement on the effects of oil development. As in so many other areas, we are rushing to judgment without really knowing what we're doing. We should have a complete and up-to-date environmental assessment before we even consider ANWR development.

Finally, we can't forget what happened two years ago in Prince William Sound. The advocates of drilling ANWR want the American people to forget Exxon Valdez. Well, we haven't forgotten it. We can't continue this kind of destruction.

PROBLEMS WITH SPECIFIC PROVISIONS

In addition, I believe there are several specific problems with the provisions of the bill regarding leasing and development of oil in the Arctic National Wildlife Refuge which need to be addressed.

The Land Reclamation Standard does not require that the land be restored to its original condition. Instead, it proposes that land disturbance be reclaimed "to a condition capable of supporting the uses which the land were capable of supporting prior to exploration" This is a weaker standard which appears to emphasize restoring only the aspects of the land which are "useful," presumably meaning useful to humans. This could limit the reclamation required in many areas, and eliminate certain wildlife and related biological aspects of land reclamation.

The lease suspension and cancellation provisions appear to have serious problems, particularly as they might relate to potentially catastrophic oil spills. (1) The decision to cancel a lease posing serious harm to human life, or significant adverse effect to the Refuge's fish and wildlife resources, is discretionary instead of mandatory—even if there is a repeated pattern of problems and hazards. (2) A lease cannot be canceled for up to five years after the Secretary (after a mandatory hearing) has found there is imminent danger to the environment or human life. (3) When a lessee is charged with endangering the environment or human life, the bill allows the lessee to use as a defense against lease cancellation the assertion that if we wait long enough the problem will eventually disappear. This defense should simply not be allowed.

I am also concerned that despite the bonding requirements, the federal government could be left with the costs of cleaning up and restoring the land if the bonds prove inadequate. There is considerable disagreement over the costs of reclamation for these lands as well as whether such reclamation can in fact be fully successful in Arctic areas. Moreover, it is not at all clear that the \$50 million reclamation fund will be adequate to cover the potential shortfall. Recent reports indicate that reclamation costs for abandoned wells in the Gulf of Mexico run well over \$3 million each. It will most likely cost much more to completely reclaim each well site in the

Arctic Refuge. At this rate, the \$50 million fund could be exhausted quickly.

Finally, the bill imposes a congressional finding that oil and gas activities will be compatible with the purposes of the Refuge. This sidesteps the procedures required for all other national wildlife refuges—a compatibility determination by the U.S. Fish and Wildlife Service based upon expert analysis. Obviously, there are concerns that such a finding could not be made based upon scientific review, otherwise there would be no need for this legislative fiat. In my view, in addition to wilderness considerations, that should be the test here as well. This congressional finding is unjustified and should be stricken from the bill.

NUCLEAR LICENSING

ONE-STEP LICENSING

The nuclear licensing provisions of the Committee bill would legislatively adopt the Nuclear Regulatory Commission's (NRC) one-step licensing procedures which were struck down by a three judge panel of the U.S. Court of Appeals for the District of Columbia, and are currently under review en banc before that Court. This proposed "streamlined" process simply goes too far. It insulates the industry from review and cuts the public out at a key juncture in the licensing process. The process replaces the previous two-step procedure, which provided for a public hearing before a construction permit was granted and a second hearing before the operating license was approved—steps which were typically many years apart.

The Committee bill's provisions would limit any pre-operational hearing to issues addressed in the original plant license. By definition, then, the people living next door to a nuclear plant would not be allowed to raise questions before it begins to operate on such matters as (1) new scientific data bearing on the safety of the underlying design of the plant that had been discovered since the original license was issued, (2) new developments affecting evacuation in the event of an accident, (3) new data suggesting the site is susceptible to an earthquake or other extraordinary conditions, and (4) new data bearing on environmental issues, such as evidence that the plant would contaminate an aquifer used for drinking water.

Since a new generation of nuclear plants is contemplated, I am particularly concerned about the first issue—new data bearing on the safety of the underlying design. This could well be a significant issue if the new plant involves new, untested technologies.

Under the Committee proposal, the right to raise significant new issues would be determined by the NRC's Section 2.206 review process (10 CFR 2.206), which does not afford the public a reasonable chance to be heard. Of the roughly 90 petitions filed under this Section to date, none have been afforded a public hearing by the NRC.

Nor does the Section 2.206 process guarantee the public a right to judicial review. While judicial review might be granted in some extreme circumstances, the three judge panel of the U.S. Court of Appeals concluded "... the scope of judicial review of denials of such Section 2.206 petitions may be limited." In fact, even if a

public hearing is granted, the provisions of this legislation would allow the reactor to begin operating before the hearing is held. The Committee bill would also limit the NRC to holding an informal hearing—one that allows neither cross examination of witnesses nor the right of discovery.

A great deal of concern was expressed during the mark-up about alleged unfair delays caused by people and organizations opposing nuclear power. The criticism might be typified by the question: "Is it fair to ask a company to put up billions of dollars and then have to wait for the plant to start operations for years while anyone who opens his/her mouth ties up the process by asking for a hearing?"

This mischaracterizes the licensing process and previous experience with the process. First, the NRC's regulations governing who can intervene are extremely strict. Not just anyone who opens his/her mouth can get past the door, and many believe that the recently revised regulations on intervention may keep many legitimate intervenors out. Second, as the recent Appeals Court Decision made clear, under existing procedures one cannot rehash old issues at the pre-operational review stage.

The NRC's own analyses do not support the contention that the public has been responsible for significant delays in plant construction. When the NRC's Atomic Safety and Licensing Board studied the effect of public participation in the licensing process in 1983, it found that the overall effect was very positive. Its report listed a number of generic and specific safety improvements that were the direct result of public participation.

There are two plants (out of some 112) where delays were significant which are consistently used to support the need for one-step licensing. In both cases, the issues raised and substantiated by public intervenors were not frivolous, they involved failures by the licensees to comply with the NRC's own safety regulations. Both of the plants commonly used as examples of public participation run amok—Shoreham and Seabrook—were, in fact, not in compliance with the NRC emergency planning regulations.

The more typical problem with delays in nuclear power plant construction is exemplified by the Washington Public Power Supply Systems (WPPSS) debacle—where massive construction problems caused by the industry itself resulted in delays and the bankruptcy of the system.

Public distrust is one of the issues which a renewed nuclear power effort will have to address. One poll published in April, 1990 by the Wall Street Journal, for example, showed 57 percent of the public opposes building any more nuclear power plants. Cutting citizen participation out of the process at the operational licensing stage is no solution to the problem in a democracy. A policy based on coercion and mistrust will only alienate people further.

STATE REGULATION OF RADIOACTIVE EMISSIONS

During Committee consideration of this Title, I offered an amendment that would have clearly established the right of state and local governments to regulate radioactive emissions in order to protect public health and safety. Although it was not adopted, I

continue to believe such a provision should be part of this legislation.

Since the early 1970s, the Congress has moved toward allowing greater state regulation of environmental and public health concerns, including radioactive emissions. In 1977, the Clean Air Act specifically provided that radioactive emissions were pollutants under the Act, and that states could adopt stricter standards than those set federally. The 1990 Clean Air Act adopts similar language, which the Senate supported.

There are several immediate conflicts between the NRC and state efforts to limit the public's exposure to radiation. The Nuclear Regulatory Commission has recently adopted a policy governing de-regulation of certain low-level radioactive wastes which the NRC deems "below regulatory concern" (BRC). This BRC decision prompted several states—who disagreed with the NRC's policy—to pass laws regulating disposal of these wastes.

So far, Minnesota, Pennsylvania, Maine, Vermont, Iowa and West Virginia have adopted laws regulating BRC wastes. In addition, laws or similar actions are pending in New Mexico, Colorado, Georgia, Oregon, and Idaho. California is reportedly likely to consider such legislation soon, and over 100 local communities, have passed resolutions opposing the BRC policy.

The Nuclear Regulatory Commission argues that these states are pre-empted from passing such laws, claiming that under the Atomic Energy Act states are not allowed to regulate levels of radiation exposure they consider hazardous to public health and safety. In addition to BRC regulation, the NRC is arguing that state action to protect the public from hazardous exposure to so-called low-level radioactive wastes and on-site waste storage is also prohibited by federal law.

The amendment I offered in Committee would have made it clear that if the NRC decides not to protect the public from health and safety hazards of radioactivity; state and local governments who are concerned have full right and authority to take action. Those opposed to this amendment charged that it would be used by local governments to block nuclear power plants or waste disposal sites, particularly the proposed permanent waste repository in Nevada. However, this argument does not withstand scrutiny.

Under current law, Nevada already has the authority to effectively block the waste repository. It could, for example, set an air quality standard of zero radioactive emissions which simply could not be met. Also, the states can block nuclear power plant construction. The Supreme Court upheld California's nuclear power ban. What the states cannot do is protect the public from radiation hazards which the NRC decides it is not concerned about. For example, the NRC has decided that one death in 2,600 from waste disposal is "below regulatory concern." However, Minnesota's elected government believes that more than one case of cancer in 100,000 people is an unacceptable risk level. That is the issue here—protecting public health and safety, not blocking plant construction.

Throughout the Committee's proceedings there appeared to be a presumption that we should trust the energy industry and, in this case, the NRC. Here, the presumption seems to be that we cannot

trust people's elected representatives. I find it alarming that we could pass legislation which reflects that view—trust the big energy companies, but not your local government! I believe we should recognize that elected state and local governments are often more sensitive and responsive to citizen concerns and allow them the right to exercise their traditional police powers to protect public health and safety.

NUCLEAR WASTE DISPOSAL PLAN

The Committee did adopt a revised version of an amendment I offered requiring the Department of Energy (DOE) to produce a plan for disposal of the wastes which will be produced by the new generation of reactors it is promoting in through the various pro-nuclear provisions of the National Energy Strategy and this legislation. During the Committee's hearings, I was surprised to learn from Secretary Watkins that the waste facilities under construction cannot accommodate the wastes which will be generated by the 100 or more new nuclear plants it envisions, and that the Department has no plans to deal with the radioactive wastes from these new reactors. While I believe that the compromise amendment will at least require the Department to fill a significant gap in its overall energy planning, I do not believe new nuclear plants should be licensed until a credible plan to dispose of their wastes has been adopted.

ADVANCED NUCLEAR REACTOR DEMONSTRATION

This bill contains a provision authorizing the construction of an advanced nuclear reactor as a federal demonstration project. While I objected to the findings of this section, which falsely asserted that nuclear power has demonstrated its safety, reliability and cost-effectiveness, I was more disturbed by the open-ended authorization approved by the Committee.

While the wording of the final provision was oblique, it was clear from the discussion in the Committee that this provision is an authorization for construction of an as-yet-unspecified type of advanced nuclear reactor. There is presently no definable price for this authorization, although opinions were expressed that the figure would be in the billions of dollars.

This is an extraordinary proposal—the equivalent of Congress purchasing a pig-in-a-poke with the taxpayer's blank check. We don't know what's in the bag, nor do we know what it will cost, but we are determined to buy it anyway. In this instance, I believe the zeal of the proponents of nuclear power is exceeding good judgment. While I do not object to research on and development of advanced nuclear reactors, I strongly object to an open-ended authorization for the construction of a demonstration plant.

PUBLIC UTILITIES HOLDING COMPANY ACT

While one can make a strong case that the electric power industry needs restructuring, I am convinced that the Public Utility Holding Company Act (PUHCA) revisions being proposed here are not the answer. The most important goal of utility regulatory reform—exemplified in the actions of several states—should be to

realize first the cost-effective savings of energy efficiency before building new generating facilities. It is often much less costly to save a kilowatt of electricity, especially if environmental costs are factored in, than to produce an additional kilowatt, and the effect on the system is essentially the same. We need to make sure that least-cost integrated resource planning is practiced by every state and utility in the country and utilities are permitted to make money by saving energy. The Committee bill's PUHCA reform provisions would move us in a different direction. It would encourage regulated utilities to compete by building more centralized power plants.

ANTI-COMPETITIVE ABUSES AND CROSS-SUBSIDIES

This legislation will not put energy saving investments on a level playing field with new power generation. Instead, utilities will be able to sell power to themselves or cross subsidize and sell power to others, while maintaining control of the facilities necessary for competition—transmission lines. Under these conditions, competition will not be genuine and utilities will be able to unfairly subsidize new generation and undercut conservation programs.

This legislation will not ensure that energy saving measures are afforded the same rate of return as new generation. Not only will cross-subsidization and anti-competitive practices undermine equal treatment, but the major shift to wholesale purchases regulated by FERC will undermine least-cost planning by the states. It is through such least cost plans that consumer advocates have been able to encourage the states to offer utilities a fair return for energy saving investments.

Regulation of retail electricity sales is a state function. Regulation of wholesale transactions is mostly federal. As utilities move toward more acquisition of electricity through wholesale purchase, the capacity of states to exercise their traditional role as protectors of consumers needs to be clarified and strengthened. The authority of states to require integrated resource plans which examine all generation alternatives and conservation and efficiency opportunities needs to be secured. However, instead of increasing and clarifying state authority over wholesale purchases, the Committee bill reduces it.

This legislation will not guarantee open access to transmission lines to prevent monopolistic abuses. Transmission access for all potential competitors is essential if competition is really going to be the outcome of this legislation. But there is no provision addressing this critical issue in the bill.

In fact, existing law prohibits FERC from ordering transmission access, unless such order would "preserve existing competitive relationships." Regulators are hamstrung in attempts to assure the existence of competitive markets.

To argue that some utilities are giving fair access to transmission lines does not address the problem. Other utilities are clearly acting in an anti-competitive manner—denying access, or imposing prohibitive rates, terms or conditions. Testimony before the Committee pointed to numerous cases where utilities have used their ownership of transmission lines to thwart competition.

Finally, I have no confidence that this legislation ensures that the states will have the authority and resources to police abuses. Under this provision, utilities would be allowed to self-deal and cross-subsidize, and the oversight provisions are simply inadequate to ensure that recent experiences with anti-competitive behavior in California, Michigan and other states do not become widespread. There should be an outright ban on self-dealing, and much stricter measures are needed to ensure oversight by state regulators.

RECENT EXPERIENCE WITH DEREGULATION

Over the past years, we have witnessed several tests of the proposition that deregulation means more consumer choices and lower costs. This proposition has not always passed the test. We deregulated savings and loans based on the promised benefits of "competition." That experiment will cost over a quarter of a trillion dollars—one of the worst policy disasters of this century. We also deregulated the airlines under similar inspiration. Now, we are considering legislation to re-regulate the industry in order to instill some measure of competition among air carriers!

I know that there are differences between these two industries and the utility industry. But, I also know there are similarities—and the similarities begin with the fact that Congress too uncritically bought into the mystique of competition—into the *laissez faire* approach to regulation.

Robert Kuttner makes the point in his recent book that "the debate over creation of incentives versus direct regulation misses the point; it is merely a dispute about the best strategy of regulation. Neither of these approaches leaves the problem to the private market—in both cases, government is intervening to change private behavior.

When Congress passed PUHCA, there were some 16 holding companies controlling more than 85 percent of the country's generation and abuse of stockholders and ratepayers was rampant. As a result, Congress put the industry in a straight-jacket called PUHCA. It restrained utilities to local and state markets, where they could be effectively regulated by state authorities, and strict reporting burdens were imposed on multi-state holding companies. Now, we are loosening the ties on that straight-jacket because the industry complains that the restrictions are overly burdensome. But are we sure that we have in place the measures to control the anti-competitive, monopolistic tendencies the utilities have demonstrated?

Existing laws, including the Public Utilities Holding Company Act, ensure electric service at reasonable prices to the American public. These laws also ensure a diverse market-place by restraining the anti-competitive behavior of an industry that has demonstrated an extraordinary tendency to be dominated by a few mega-corporations. The PUHCA reforms reported by the Energy Committee would re-write the rules, altering the checks-and-balances of the system. I am convinced, that these provisions do not have adequate checks and balances to protect consumers and ratepayers from monopolistic behavior.

This is not a question which should be taken lightly. PUHCA reform may be the political time-bomb of this legislation. While most of our constituents will never have the opportunity to visit the Arctic National Wildlife Refuge, or have their property condemned when natural gas companies exercise eminent domain—nearly every voter in every state has electric switches on the walls of their homes and apartments. What we do, or do not do, here will ultimately effect every American.

I simply ask each of my colleagues to consider, if you had it to do over would you vote to deregulate the savings and loan industry under the same conditions as before? Would you vote to deregulate the airline industry under the same conditions as before? I believe the PUHCA provisions in this bill have not been sufficiently scrutinized and explored, and are missing critical elements to safeguard consumers and the environment.

During Committee debate, the deregulation of the telecommunications industry was suggested as a positive example of how PUHCA reform could work—and it was asserted that access was not part of the reform of the telephone industry. These assertions are not correct. The telecommunications industry was deregulated by the federal Courts, not by Congress. Access was included—the Court mandated perhaps the most rigorous form of access imaginable in its doctrine of “equal access.” Moreover, since deregulation we have witnessed a series of cross subsidization and other abuses coming to light, particularly where the courts allowed phone companies to be involved in unrelated businesses. Criminal charges for violation of the Court’s Modified Final Judgement, repeated findings of cross subsidy by state PUC’s, and various fraud and abuse cases have all been results of the deregulation of this industry.

NATURAL GAS

OPTIONAL CERTIFICATE PROCEDURES

The Natural Gas provisions of the legislation reported include a section authorizing “optional certificate procedures” for natural gas pipelines. This “streamlined” authority for gas pipeline construction would limit rights of citizens to participate in public hearings, run roughshod over the rights of property owners, and eliminate review under the National Environmental Policy Act.

The ostensible purpose of this section is to avoid the complex, costly and time-consuming process now used for certification. Notably, the existing certification process has been bogged down by the natural gas pipelines themselves. As the National Energy Strategy explains, “potential competitors of proposed new pipeline facilities frequently intervene in these proceedings with the intent to delay construction. . . .”

The philosophy behind the amendment is to allow gas pipeline companies, and others, to proceed with pipeline construction outside of normal FERC regulations assuming they proceed at their own risk. This is, in a manner of speaking, a “free market” approach to pipeline regulation.

This contrasts with the “command and control” system of regulating interstate pipelines which has developed since 1938, and is

now administered by the Federal Energy Regulatory Commission under Section 7 of the Natural Gas Act.

Section 7, as presently enacted, prohibits construction until the applicant pipeline company has satisfied FERC that the proposed pipeline is required by "public convenience and necessity." The grant of a certificate of public convenience and necessity not only authorizes construction, but condemnation of land pursuant to Section 7(h) in the Federal courts, and by State law in most states.

The Supreme Court has long held that the Natural Gas Act is a comprehensive regulatory scheme which gives the Federal Government exclusive jurisdiction over all interstate natural gas facilities (e.g., pipelines, compressor stations, storage fields). Attempts by State agencies to impose their own environmental requirements have been rejected by the courts. Also, FERC has sometimes been willing to impose stringent environmental conditions when granting certificates.

In return for submitting to this command and control regime, natural gas companies have by law been assured recovery of costs and a reasonable rate of return on their investments.

The optional certificate procedures section of this legislation would provide natural gas companies with an alternative to this command and control approach by allowing construction to commence with no showing by the pipeline company that the pipeline is required by the public convenience and necessity. Construction is entirely at the pipeline company's own risk. There is no assurance of cost recovery or a reasonable rate of return on investment. Whether or not to invest in construction becomes a pure business decision, and the public interest is not a factor.

This provision would allow companies upon application to obtain a "certificate of convenience and necessity." There is no limitation on the size or function of facilities other than they be "for the transportation or sale of natural gas." FERC is mandated to issue a certificate if the few specific conditions detailed in the law are complied with—FERC has no authority to deny or further condition the certificate if the specified conditions are met. Further, the entire transaction is exempt from the Commission's authority under Sections 4 and 5 of the Natural Gas Act to find that any aspect of it may be unjust or unreasonable.

The ability to challenge certificates under this section is very limited. No one other than a competitor has any right to challenge the automatic granting of a certificate under whatever terms the buyer and seller of the certificated services agree to. This includes consumers who may be paying for the services through their retail rates. It also includes property owners whose property may be taken by eminent domain exercised by an optional certificate holder.

With such a certificate, the National Gas Act provides the company with automatic Federal eminent domain rights—the power to take private property through condemnation proceedings. While most condemnation by interstate pipeline companies has been under State law, state courts have traditionally taken pipeline construction undertaken pursuant to FERC authority to be *prima facie* evidence that the pipeline is required by public convenience and necessity, the usual requirement for condemnation under State

law. Thus, under the scheme proposed by the Committee bill, either Federal or state condemnation authority can be utilized without the necessity of any public hearing or review of the need for, routing of, or other public interests in the pipeline proposal.

Further, since this section makes application and certificate issuance an administrative action—instead of an agency decision—environmental laws may no longer apply. NEPA generally applies to actions where the agency has some discretion—the wording of the new optional certificate provision does not appear to leave any discretion to FERC. Thus, while presently an application might be accompanied by an Environmental Impact Statement or low-level environmental assessment (a review which does *not* require public hearing or notice), under the provisions of this Title even an environmental assessment might not be obligated before issuance of a certificate.

Under current procedures, NEPA review is critical to establishing the environmental conditions attached to the certificate of convenience and necessity. These conditions might define over-all routing issues, but also might specify basic environmental requirements such as pipeline depth, surface cover and grading, possible groundwater problems, environmental hazards, etc. The Title's optional certificate procedures may eliminate these critical environmental protections as well as the procedural safeguards of the National Environmental Policy Act.

This provision goes far beyond even the Administration's proposals in the National Energy Strategy (NES). Under NES's streamlined approach pipelines "would not receive eminent domain rights." Under NES, a more efficient environmental review process is called for, but not one which removes many construction projects from NEPA altogether.

This section of the Committee bill flies in the face of basic American values, particularly the respect for private property, a commitment to due process, and presumption of a right to personal privacy. Eminent domain—the government's right to take property for public use—is a blunt instrument with a history of abuse. This provision will unquestionably launch a new era of such conflicts.

The Constitution places checks on federal eminent domain power by requiring just compensation and due process. Just compensation will be set by state or federal courts in condemnation proceedings, but where in the process established by this new provision is due process being afforded? In similar circumstances, the Courts have found that due process was provided by the legislature's deliberations. For the many people who will be affected by this provision the Senate—and the Congress'—deliberations are their due process. We are deciding that it is so imperative to build pipelines faster that we must hand over the government's power of eminent domain to gas companies and others "on application." I, for one, do *not* believe that this imposition on personal rights and environmental protections is at all justified, and strongly oppose this provision.

DEREGULATION OF PIPELINE SALES

I am also concerned about Section 11 of this Title which deregulates pipeline sales of natural gas, if the Commission finds that a

pipeline serves a "competitive" market. While the section as amended calls for the natural gas company to provide transportation service comparable to its sales service, there is no requirement that consumers be protected from discriminatory practices. No compelling argument has been offered to show that pipelines no longer exercise monopoly power in their service territories.

SUNSHINE IN GOVERNMENT ACT

Another Committee amendment which was adopted without serious discussion would provide FERC with an exemption to the Sunshine in Government Act. The effect of this amendment would be to allow the Commission to meet behind closed doors to discuss policy issues. Reportedly, the Chairman of FERC promoted this amendment, which he sees as a precedent for other agencies to follow.

The Sunshine Act is an important measure that ensures the accountability of FERC and other government agencies. The inclusion of this amendment in the Committee bill contradicts this statute, and shuts out those who desire openness and accountability in government.

REFUNDS

Finally, the Committee omitted from the final bill a provision of the original bill to provide refunds to customers who are paying excessive rates under currently approved tariffs. Pipelines place rate increases in effect while they are being reviewed by the Commission subject to refund, but rate decreases are prospective only. The original provision would have offered FERC refund authority for rate decreases. When I proposed an amendment to restore this provision, it was argued that the full impact of the rebate provision was not adequately understood, and more hearings were necessary. Since then, separate legislation regarding refunds has been introduced by Senator Metzenbaum and hearings on this legislation are scheduled for the near future.

HYDROPOWER

FEDERAL JURISDICTION OVER PROJECTS OF 5MW OR LESS

I am profoundly concerned about both the wisdom and the substance of the bill's provision designed to eliminate Federal jurisdiction over the majority of the nation's licensed hydroelectric projects and turn their regulation over to the states. This Section would automatically eliminate Federal jurisdiction over any new hydroelectric project of 5 megawatt (MW) capacity or less in a state, once the state's governor "notifies" the Secretary of Energy that the state "has assessed its river resources in a comprehensive way and has in place a process for regulating such projects . . ." (if not located within an Indian reservation, a national park, or a wild and scenic river). In addition, if the state takes jurisdiction, the provision allows anyone with an existing hydroelectric license for a similarly sized project, to opt for either federal or state jurisdiction, presumably whichever would be more advantageous to the project

owner. Such a provision is an open invitation to regulatory forum shopping, which will turn hydro regulation on its head.

It has been my understanding that the rationale for this amendment is that these smaller facilities are cumbersome for the Federal Energy Regulatory Commission (FERC) to administer, and state regulators are likely to be more efficient and sensitive to local concerns in overseeing these power producers. I generally tend to favor state and local based administration. The program which the State of Maine has developed, for example, is a laudable program which incorporates a comprehensive management plan and regulatory approach. If more states had such a program, I might be a supporter, rather than an opponent, of these provisions. But, I have serious concerns about turning over jurisdiction to the states without reasonable assurance that such programs are in place and without a clear understanding of how important environmental, natural, cultural and historic resources laws will be affected by this change in jurisdiction.

It is clear from the debate in Committee, and the terms of the Committee bill, that in the event of state assumption of regulation there are no meaningful criteria or standards for state regulation. Also, the Committee bill would eliminate applicability of key Federal laws, including environmental, natural, and cultural resource management laws.

In Committee, I voiced concern about this and enumerated several federal laws which would no longer be applicable to these hydroelectric sites. One concern, for example, was the National Wild and Scenic Rivers Act. Under the terms of Section 7a of that Act, FERC is prohibited from licensing water resource projects (dams, conduits, reservoirs, etc.) on "or directly affecting any river which is designated" as a wild and scenic river. Because the Wild and Scenic Rivers Act applies only to FERC, however, if hydro projects under 5MW became exempt from FERC jurisdiction the states would be allowed to approve dams on such rivers.

The Committee responded to this example by including Wild and Scenic Rivers in its list of areas not affected by the change in jurisdiction being proposed. However, there was no effort to address other concerns which I raised, such as removing these facilities from the operation of Section 7 of the Endangered Species Act (ESA), nor were proponents of this provision prepared to even enumerate the federal laws affected.

The Committee proposal would eliminate the most important mechanism for protecting endangered species in use today. Under Section 7 of ESA, all Federal agencies are required, through consultation with the Secretary of the Interior, to ensure that any action they take will "not likely jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat." State regulatory action would still be subject to the Section 9 prohibition against takings of endangered species, but this is not as strong and can only be enforced through litigation.

There are real conflicts between endangered species and hydro projects with a capacity of less than 5 megawatts. At least ten small hydro projects are pending in the Salmon River in Idaho. Most of the basin constitutes the rearing habitat for Spring and

Summer chinook, which are the subject of a pending petition for listing under the ESA. In New England, projects on the Connecticut and the Kennebec affect shortnose sturgeon, an endangered species. There are undoubtedly many other examples.

Another law potentially affected by this hydro licensing provision is the American Indian Religious Freedom Act. New hydro licenses are currently subject to this law, but under the Committee bill, could be considered exempt. Hydroelectric projects may flood remote areas that serve as religious sites, and in many cases, state law will not protect them.

Such conflicts are not that far-fetched, in part because human settlements tend to lie along rivers. For this reason, proposed projects are often likely to involve archaeological and historic sites, too. For example, proposed Phase II of the Lee Creek project above Fort Smith Arkansas would flood several Indian archaeological sites in Oklahoma, which has led the Cherokee Indian Nation to oppose the project. Under state law, a hydroelectric license would not necessarily be subject to any review for significant historic or prehistoric sites in the project area. But under current federal regulation, the National Historic Preservation Act would require that the State Historic Preservation Officer be consulted before the license could be issued.

These are just a few examples of the problems which this section could create if interpreted to be an exemption from the operation of these federal laws, and it is almost certain to result in many such conflicts.

According to testimony by the Commission's Director of the Office of Hydropower Licensing before the House Interior Committee on April 30 of this year, there are now 1,416 hydroelectric power plants operating under Commission jurisdiction that are 5MW or less—67% of all hydroelectric projects under Commission license or exemption. The Committee received testimony that only a few states have regulatory systems that constitute even an approximate analogy to the comprehensive system in the Federal Power Act. Yet the criteria of transfer in the bill are virtually without substance—consisting only of a listing of certain subjects to be given "appropriate consideration." What this adds up to is that some two thirds of the nation's hydropower projects under the bill could be open to significant, if not near total, deregulation.

The bill is also a prescription for an extremely chaotic regulatory situation. The Federal Power Act is supposed to be regulation based on "comprehensive" improvement or development of waterways, taking into account environmental concerns and the full range of other water use needs and concerns. Yet with this bill—and even on a single river—some projects may wind up operating under federal requirements, others will be operating under state requirements, upstream and downstream states may be operating subject to entirely different rules and assumptions, and some licenses may even be shifting from one forum to another as the rules and regulatory climate change. Some projects involve several licenses, which may be wind up under different regulatory jurisdiction due to the proposed changes. In any event, without requirements for a consistent approach, the remaining Federal regulation

of projects greater than 5MW cannot possibly be conducted in a truly "comprehensive" manner.

Turnovers of hydropower jurisdiction to some states may result in major damage to fisheries and wildlife resources, losses of public recreational opportunities, and violations of Indian treaty obligations. These concerns are especially centered on maintaining in-stream flows in bypassed river reaches where water is removed from the stream for transportation to a powerhouse, sometimes miles away and sometimes affecting long reaches downstream. Under the laws of some states, there is little or no provision for requiring such in-river flows—this has been a responsibility met through the federal license. This bill is wholly inadequate to deal with the range of these concerns.

FEDERAL LANDS PROTECTIONS

I am also concerned about the radical changes in Federal hydroelectric licensing programs that are proposed in this section of the bill, embodied in the repeal of Section 4(e) federal land protection provisions. With an exception for Indian reservations, this provision overturns the U.S. Supreme Court's 1984 *Escondido* decision, and severely weakens the protection of most Federally-managed lands. The bill would eliminate the 70-year old authority for Federal land managers to place license conditions on projects for the protection and utilization of public lands when a hydropower project is located and operated on reserved federal lands. The provision will seriously alter the balance of interests that is now part of the licensing process. It will open national forest lands, wildlife refuges, recreation areas, defense lands, and other public lands to increased exploitation for private gain without ensuring that the Federal departments and agencies that are charged with the management of those lands have the authority to condition hydroelectric development.

PERMANENT GRANTS OF WATER USE

This bill would also allow existing licenses to avoid Federal relicensing and circumvent the requirements of the 1986 Electric Consumers Protection Act, and would allow the states to permanently alienate public water resources for the benefit of private parties. A fundamental premise of the 1920 Federal Water Power Act (now the Federal Power Act) is that the use of water power resources of the nation's rivers and streams would never be permanently turned over to private hands, but would only be available for private purposes for limited periods and be subject to reconsideration or redeployment at future intervals. The hydropower provisions of this bill reopens the door—shut resoundingly seventy years ago—to allow permanent grants of rights to use water power resources to private developers. This is a deeply disturbing prospect that deserves far more consideration than was given during the short mark-up period for this portion of the bill

COAL

Per unit of energy, coal burning contributes more to global warming than any other energy resource (with the exception of oil

shale). In terms of air pollution and natural resource damage, coal combustion and mining pose serious environmental problems.

For these reasons, I have to question the series of projects proposed in the Committee bill to advance "clean-coal technologies." While such technologies have a role in the nation's energy transition, more work is required to address environmental concerns. The degree of commitment in this bill appears to be out of proportion to the technology's future potential.

Of particular concern is the provision for a "coal refining program." It authorizes the construction of at least two demonstration projects, and authorizes DOE to solicit proposals for joint venture commercial scale projects. Until producing such coal liquids could promise to significantly reduce pollutants, carbon dioxide emissions, or reduce consumer fuel costs, commitment to a demonstration program is premature.

REVISING THE CLEAN AIR ACT

Sulphur emissions from coal-fired power plants are the source of acid rain which threatens public health and the environment in many states. Power plants also emit nitrogen oxides into the air which combine with other chemicals to form smog. The Clean Air Act of 1990 will require the sources of these pollutants, including power plants, to reduce these emissions. A key element of this law is requiring refurbished power plants to meet the same, stricter pollution control standards required by new plants. The provisions of the Committee bill would enable reconstructed power plants to evade these requirements.

Under the provisions of the Committee bill, refurbished power plants would be exempt from "new source performance standards," even if actual hourly emission rates increase. Nearly all power plants with capital investment projects would be exempt from park protection and air quality standards. Refurbished power plants would be exempt from new source controls on nitrogen oxides, adding to the already serious health problems of urban smog.

URANIUM ENRICHMENT

With little debate, the Committee adopted the provisions of this legislation regarding Uranium Enrichment. But, there are several serious problems with this section which the Committee has not addressed.

ENRICHMENT BAILOUT

This legislation contains provisions providing for an unprecedented and extraordinarily wasteful taxpayer bailout of the federal uranium enrichment industry and roughly a dozen private uranium and thorium companies, several of which are foreign-owned.

Under the Atomic Energy Act, the Department of Energy's civilian uranium enrichment program is supposed to recover all of its costs. According to the General Accounting Office, DOE has failed to recover more than \$11 billion. Both DOE and the Office of Management and Budget have confirmed the validity of the GAO calculation. Further, DOE has yet to recover any of the costs of decommissioning its three existing uranium enrichment plants, one of

which is already permanently shut down, and the other two of which are wastefully operating at reduced capacity. Estimated decommissioning costs are \$1 billion per plant and some estimates put total costs at \$20 billion or more.

The bailout provisions of this legislation would "write-off" essentially all \$11 billion in unrecovered costs. Further, they would lock DOE into a series of uranium enrichment contracts, arguably illegal under current law, under which DOE commits to supply enriched uranium at a price below the agency's costs (especially if those costs include decommissioning and waste disposal expenses, as they should). In short, the legislation would prevent DOE from recovering enough money from its customers to cover its own liabilities. The taxpayer would be stuck with \$11 billion in unrecovered costs, and the full financial burden for environmental problems.

NEW ENRICHMENT AUTHORITY

The new uranium enrichment authority which the bill establishes has severe shortcomings. First, it will be essentially bankrupt at its inception. Second, the existing law's requirement for full cost recovery is repealed. Third, the new government agency's mandate includes no provision to protect the taxpayer from absorbing future costs for subsidies and liabilities. Finally, the bill requires a nuclear utility, virtually assuring conflict of interest.

The Committee legislation also authorized the new enrichment authority to borrow \$2.5 billion off-budget, secured against what remaining taxpayer assets are left in the enrichment program. This borrowing authority is intended to allow the entity to construct a new uranium enrichment plant using AVLIS (laser isotope separation) technology.

Pushing for AVLIS makes little sense and virtually guarantees that future bailouts will be necessary. DOE's two existing enrichment plants are only operating at half capacity, and there is little reason to expect that to change quickly. Only a large AVLIS plant would be likely to be competitive, assuming the technology meets DOE's cost projections. But such a large plant would either put the existing plants out of business, incurring large liabilities and job losses, or would require blending of the products from the new and existing plants, forcing the continued operation of the now unnecessary and uneconomic old enrichment plants.

Representatives of the nuclear industry lobbied hard in the past for the investments which they are now seeking to have "written off." For example, in urging the heavy investments involved here, Edison Electric Institute representatives testified in Congress that "the economic penalties that would be imposed by a shortfall of enrichment capability far exceed the costs that would be associated with temporary oversupply." From 1964 to the mid-1980s, the nuclear industry repeatedly stated that it would pay for all the costs associated with the new plant and equipment and the operation of the civilian uranium enrichment program. In particular, industry representatives indicated that nuclear utilities would bear all the costs of the program.

There is a lesson we should learn from the history of the federal uranium enrichment program. In establishing the first uranium enrichment program, Congress clearly made major mistakes which is evidenced by the billions of dollars of debt and liability which we are now being asked to write off. Perhaps we should think hard before embarking upon another uranium enrichment program, authorizing billions of dollars more in borrowing—particularly when the plan makes little business sense, and even minimal statutory requirements for cost recovery are being removed.

MILL TAILINGS CLEAN UP SUBSIDY

In addition to these provisions, the bill proposes a \$300 million subsidy for clean up of uranium mill tailings at a series of active uranium processing sites, primarily in the West, as well as an inactive thorium processing plant in the Midwest. The various beneficiaries of this subsidy have no legal entitlement to the subsidy. They all lost their suits in Claims Court seeking reimbursement for these clean-up costs. Further, the purpose of the bail-out is unclear. The bail-out will do nothing to restore a viable domestic uranium industry and the bail-out is unnecessary to assure the U.S. of a viable and secure source of supply. Moreover, the bail-out constitutes bad precedent. The U.S. taxpayer should not be asked to pay the costs businesses incur to meet "new" health and safety requirements. This bail-out would simply be a \$300 million windfall for about a dozen companies, most of which are large U.S. or foreign energy or mineral conglomerates.

ENERGY EFFICIENCY

As a supporter of energy conservation, I had hoped that this legislation would contain strong and effective measures to promote a more energy efficient America. The efficiency provisions that emerged from the Committee are, however, quite disappointing and largely ineffective.

Besides CAFE, the single greatest potential for energy savings was in the proposed equipment standards. However, Committee action resulted in a weak provision. First, proposed standards for motors were dropped, then the coverage of heating, ventilating and air conditioning equipment was limited to only small commercial equipment. Finally, instead of adopting specific standards—for products about which we know what can be done and what is cost effective—the legislation leaves the issue up to a future rule making by the Department of Energy. If past appliance standards rule makings are any example, this will result in a drawn-out process, lasting perhaps 6 or 7 years, before any standards take effect—assuming any are finally adopted by DOE.

The provisions originally considered by the Committee also had the potential to make major energy efficiency inroads by mandating that states and utilities conduct least-cost planning and begin investing in energy efficiency technologies. While these provisions would not have prescribed how the states would carry out this mandate, they would have required concrete action towards a goal on which there appears to be general concurrence. Also, as an inducement to complete such planning, an amendment proposed to

allow conservation to qualify under the Public Utilities Regulatory Policy Act (PURPA) for special rate treatment as a new energy source in states which did not carry out the mandate.

In the end, neither the mandate nor the PURPA inducement measure survived. Instead, the provision in the Committee bill simply asks states to consider taking action. It is in effect little more than a salutary resolution by the Congress, and deserves little credit as an energy saving measure.

A third measure which could have induced more energy efficiency was a proposal for an industrial energy reporting program. This program involved gathering basic energy information from industry and setting voluntary efficiency targets. In the past, a similar program was credited with significant energy savings. Instead of adopting this provision, the Committee has proposed to study the issue further. The bill authorizes a 12 month study of the feasibility and potential savings from reintroducing industrial energy reporting and voluntary savings targets. Again, this is a weak provision which cannot be credited as an energy savings measure.

The Committee legislation does approve building efficiency standards. These standards would be mandatory for federal buildings and voluntary for all others. However, this does not confer any new authority on the Department of Energy, and these programs are already underway. So, this legislation cannot claim any credit for saving energy through this measure.

The energy efficiency provisions of the Committee bill are not entirely without merit. For example, the standards for lighting equipment, showerheads and transformers could result in higher efficiency standards and result in non-trivial energy savings. Testing and labeling for windows and luminaries is also a step forward, but it is difficult to predict what these efforts will produce in terms of energy savings. The provisions regarding the Federal Energy Management Program appear to be positive, but a one-time \$50 million authorization is severely limiting. Also, the provisions requiring least-cost planning by the Tennessee Valley Authority and the Power Marketing Administrations will make some difference.

Over-all, however, the energy efficiency programs of this legislation fall far short of what can be accomplished. They are not an adequate response to the overwhelming public demand for expanded energy efficiency efforts. They don't even approach the level of commitment and action that will be needed to address the serious national and international problems we face—particularly avoiding further global warming.

CONCLUSION

This nation needs an energy strategy that addresses the very serious problems we face, particularly global warming caused by our continued reliance on fossil fuels, and vulnerability to critical supply disruptions and sudden price increases, resulting from our dependence on foreign oil. If we fail to commit our national resources to achieving world leadership in the energy efficiency and renewable energy supply technologies, a decline of our economic prosperity and international competitiveness could be the hallmark of the twenty-first century.

Now is the time to devise new strategy. Public attention is focussed on these problems and supportive of significant shifts to energy conservation, energy efficiency and renewable energy sources. We have an historic opportunity to redirect our nation's energy policies toward the transition to a sustainable energy future.

Unfortunately, while this bill recommends significant policy changes, these changes would not meaningfully improve the direction of our energy policy. In short, I believe this bill should not serve as a viable framework for U.S. energy policy because it fails to take advantage of the opportunity before us for a positive change in direction.

With all due respect to the impressive thought and good faith effort that has gone into drafting this bill, the end-product is not the energy strategy this nation desperately needs. Given the high stakes for the American people, for the other inhabitants of this planet and for future generations, I could not vote for the Committee bill.

PAUL WELLSTONE.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in *italic*, existing law in which no change is proposed is shown in roman):

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

* * * * *

TITLE V—IMPROVING AUTOMOTIVE EFFICIENCY

DEFINITIONS

SEC. 501. For purposes of this part:

(1) The term "automobile" means any 4-wheeled vehicle propelled by fuel, or by alcohol or natural gas, which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and

(A) which is rated at 6,000 lbs. gross vehicle weight or less, or

(B) which—

(i) is rated at more than 6,000 lbs. gross vehicle weight but less than 10,000 lbs. gross vehicle weight,

(ii) is a type of vehicle for which the Secretary determines, by rule, average fuel economy standards under this part are feasible, and

(iii) is a type of vehicle for which the Secretary determines, by rule, average fuel economy standards will result in significant energy conservation, or is a type of vehicle which the Secretary determines is substantially used for the same purposes as vehicles described in subparagraph (A) of this paragraph.

The Secretary may prescribe such rules as may be necessary to implement this paragraph.

(2) The term "passenger automobile" means any automobile (other than an automobile capable of off-highway operation) which the Secretary determines by rules is manufactured primarily for use in the transportation of not more than 10 individuals.

(3) The term "automobile capable of off-highway operation" means any automobile which the Secretary determines by rule—

(A) has a significant feature (other than 4-wheel drive) which is designed to equip such automobile for off-highway operation, and

(B) either—

(i) is a 4-wheel drive automobile, or

(ii) is rated at more than 6,000 pounds gross vehicle weight.

(4) The term "average fuel economy" means average fuel economy, as determined under section 503.

(5) The term "fuel" means gasoline and diesel oil. The Secretary may, by rule, include any other liquid fuel or any gaseous fuel within the meaning of the term "fuel" if he determines that such inclusion is consistent with the need of the Nation to conserve energy.

(6) The term "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline (or equivalent amount of other fuel) consumed, as determined by the EPA Administrator in accordance with procedures established under section 503(d).

(7) the term "average fuel economy standard" means a performance standard which specifies a minimum level of average fuel economy which is applicable to a manufacturer in a model year.

(8) The term "manufacturer" means any person engaged in the business of manufacturing automobiles. The Secretary shall prescribe rules for determining, in cases where more than one person is the manufacturer of an automobile, which person is to be treated as the manufacturer of such automobile for purposes of this part. Such term also includes any predecessor or successor of such a manufacturer to the extent provided under rules which the Secretary shall prescribe.

(9) The term "manufacture" (except for purposes of section 502(c)) means to produce or assemble in the customs territory of the United States, or to import.

(10) The term "import" means to import into the customs territory of the United States.

(11) The term "model type" means a particular class of automobile as determined, by rule, by the EPA Administrator, after consultation and coordination with the Secretary.

(12) The term "model year", with reference to any specific calendar year, means a manufacturer's annual production period (as determined by the EPA Administrator) which includes January 1 of such calendar year. If a manufacturer has

no annual production period, the term "model year" means the calendar year.

(13) The term "Secretary" means the Secretary of Transportation.

(14) The term "EPA Administrator" means the Administrator of the Environmental Protection Agency.

(15) The term "light truck" means an automobile other than a passenger automobile.

(16) The term "vehicle class" means (i) all passenger automobiles; (ii) all light trucks; or (3) a class of light trucks as determined by the Secretary of Transportation under section 502(b)(4).

AVERAGE FUEL ECONOMY STANDARDS APPLICABLE TO EACH MANUFACTURER

[SEC. 502. (a)(1) Except as otherwise provided in paragraph (4) or in subsection (c) or (d), the average fuel economy for passenger automobiles manufactured by any manufacturer in any model year after model year 1977 shall not be less than the number of miles per gallon established for such model year under the following table:

Average fuel economy standard

[In miles per gallon]

Model year:	
1978.....	18.0.
1979.....	19.0.
1980.....	20.0
1981.....	Determined by Secretary under paragraph (3) of this subsection.
1982.....	Determined by Secretary under paragraph (3) of this subsection.
1983.....	Determined by Secretary under paragraph (3) of this subsection.
1984.....	Determined by Secretary under paragraph (3) of this subsection.
1985 and thereafter	27.5

[(2) Not later than January 15 of each year, beginning in 1977, the Secretary shall transmit to each House of Congress, and publish in the Federal Register, a review of average fuel economy standards under this part. The review required to be transmitted not later than January 15, 1979, shall include a comprehensive analysis of the program required by this part. Such analysis shall include an assessment of the ability of manufacturers to meet the average fuel economy standard for model year 1985 as specified in paragraph 1 of this subsection, and any legislative recommendations the Secretary or the EPA Administrator may have for improving the program required by this part.

[(3) Not later than July 1, 1977, the Secretary shall prescribe, by rule, average fuel economy standards for passenger automobiles manufactured in each of the model years 1981 through 1984. Any such standard shall apply to each manufacturer (except as provided in subsection (c)), and shall be set for each such model year at a level which the Secretary determines (A) is the maximum feasible average fuel economy level, and (B) will result in steady progress

toward meeting the average fuel economy standard established by or pursuant to this subsection for model year 1985.

[(4) The Secretary may, by rule, *amend* the average fuel economy standard specified in paragraph (1) for model year 1985, or for any subsequent model year, to a level which he determines is the maximum feasible average fuel economy level for such model year, except that any amendment which has the effect of increasing an average fuel economy standard to a level in excess of 27.5 miles per gallon, or of decreasing any such standard to a level below 26.0 miles per gallon, shall be submitted to the Congress in accordance with section 551 of the Energy Policy and Conservation Act, and shall not take effect if either House of the Congress disapproves such amendment in accordance with the procedures specified in such section.

[(5) For purposes of considering any modification which is submitted to the Congress under paragraph (4), the 5 calendar days specified in section 551(f)(4)(A) of the Energy Policy and Conservation Act shall be lengthened to 20 calendar days, and the 15 calendar days specified in section 551 (c) and (d) of such Act shall be lengthened to 60 calendar days.]

(a)(1) *Except as otherwise provided in subsection (c), the average fuel economy for passenger automobiles manufactured by any manufacturer in any model year after model year 1984 shall not be less than the number of miles per gallon established for such model year under the following table:*

Average fuel economy standard

Model year:

<i>1985 through 1995.....</i>	<i>27.5 miles per gallon.</i>	
<i>1996 through 2001.....</i>	<i>Determined by the</i>	<i>Secretary under</i>
	<i>paragraph (2)(A).</i>	
<i>2002 thereafter.....</i>	<i>Determined by the</i>	<i>Secretary under</i>
	<i>paragraph (2)(B).</i>	

(2) *Not later than July 1, 1992, the Secretary shall prescribe, by rule, for each manufacturer of passenger automobiles, average fuel economy standards for—*

(A) passenger automobiles manufactured by such manufacturer in model years 1996 through 2001; and

(B) passenger automobiles manufactured by such manufacturer in model years 2002 and thereafter.

(3) *The average fuel economy standard prescribed by the Secretary for any manufacturer under paragraph (2)(A) or (B) shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for such manufacturer as determined under subsection (d).*

[(b) The Secretary shall, by rule, prescribe average fuel economy standards for automobiles which are *not*, passenger automobiles and which are manufactured by any manufacturer in each model year which begins more than 30 months after the date of enactment of this title. Such rules may provide for separate standards for different classes of such automobiles (as determined by the Secretary), and such standards shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level which such manufacturers are able to achieve in each model year to which this subsection applies. Any standard applicable to a

model year under this subsection shall be prescribed at least 18 months prior to the beginning of such model year.】

(b)(1) *The Secretary shall, by rule, prescribe average fuel economy standards for light trucks which are manufactured by and manufacturer in each model year before model year 1996. Such standards shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level which such manufacturers are able to achieve in each model year to which this subsection applies. Any standard applicable to a model year under this subsection shall be prescribed at least 18 months prior to the beginning of such model year.*

(2) *Not later than July 1, 1992, the Secretary shall prescribe, by rule, for each manufacturer of light trucks, average fuel economy standards for—*

(A) *light trucks manufactured by such manufacturer in model year 1996 through 2001; and*

(B) *light trucks manufactured by such manufacturer in model years 2002 and thereafter.*

(3) *The average fuel economy standard prescribed by the Secretary for any manufacturer under paragraph (2)(A) or (B) shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for such manufacturer as determined under subsection (d).*

(4) *Any rule prescribe by the Secretary under this subsection may provide for separate standards for different classes of light trucks (as determined by the Secretary).*

(c)(1) *On application of a manufacturer who manufactured (whether or not in the United States) fewer than 10,000 passenger automobiles in the second model year preceding the model year for which the application is made, the Secretary may, by rule, exempt such manufacturer from subsection (a) for any model year prior to model year 1996. An application for such an exemption shall be submitted to the Secretary, and shall contain such information as the Secretary may require by rule. Such exemption may only be granted if the Secretary determines that the average fuel economy standard otherwise applicable under subsection (a) is more stringent than the maximum feasible average fuel economy level which such manufacturer can attain. The Secretary may not issue exemptions with respect to a model year unless he establishes, by rule, alternative average fuel economy standards for passenger automobiles manufactured by manufacturers which receive exemptions under this subsection. Such standards may be established for an individual manufacturer, for all automobiles to which this subsection applies, or for such classes of such automobiles as the Secretary may define by rule. Each such standard shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for the manufacturers to which the standard applies. An exemption under this subsection shall apply to a model year only if the manufacturer manufactures (whether or not in the United States) fewer than 10,000 passenger automobiles in such model year.*

(2) *Any manufacturer may elect in any application submitted under paragraph (1) to have the applications for, and administrative determinations regarding, exemptions and alternative average*

fuel economy standards be consolidated for two or more of the model years after model year 1980 and before model year 1986. The Secretary may grant an exemption and set an alternative standard or standards for all model years covered by such application.

[(d)(1) Any manufacturer may apply to the Secretary for modification of an average fuel economy standard applicable under subsection (a) to such manufacturer for model year 1978, 1979, or 1980. Such application shall contain such information as the Secretary may require by rule, and shall be submitted to the Secretary within 24 months before the beginning of the model year for which such modification is requested.

[(2)(A) If a manufacturer demonstrates and the Secretary finds that—

[(i) a Federal standards fuel economy reduction is likely to exist for such manufacturer for the model year to which the application relates, and

[(ii) such manufacturer applied a reasonably selected technology,

the Secretary shall, by rule, reduce the average fuel economy standard applicable under subsection (a) to such manufacturer by the amount of such manufacturer's Federal standards fuel economy reduction, rounded off to the nearest one-tenth mile per gallon (in accordance with the rules of the Secretary). To the maximum extent practicable, prior to making a finding under this paragraph with respect to an application, the Secretary shall request, and the EPA Administrator shall supply, test results collected pursuant to section 503(d) of this Act for all automobiles covered by such application.

[(B)(i) If the Secretary does not find that a Federal standards fuel economy reduction is likely to exist for a manufacturer who filed an application under paragraph (1), he shall deny the application of such manufacturer.

[(ii) if the Secretary—

[(I) finds that a Federal standards fuel economy reduction is likely to exist for a manufacturer who filed an application under paragraph (1), and

[(II) does not find that such manufacturer applied a reasonably selected technology,

the average fuel economy standard applicable under subsection (a) to such manufacturer shall, by rule, be reduced by an amount equal to the Federal standards fuel economy reduction which the Secretary finds would have resulted from the application of a reasonably selected technology.

[(3) For purposes of this subsection:

[(A) The term "reasonably selected technology" means a technology which the Secretary determines it was reasonable for a manufacturer to select, considering (i) the Nation's need to improve the fuel economy of its automobiles, and (ii) the energy savings, economic costs, and lead-time requirements associated with alternative technologies practicably available to such manufacturer.

[(B) The term "Federal standards fuel economy reduction" means the sum of the applicable fuel economy reductions determined under subparagraph (C).

[(C) The term "applicable fuel economy reduction" means a number of miles per gallon equal to—

[(i) the reduction in a manufacturer's average fuel economy in a model year which results from the application of a category of Federal standards applicable to such model year, and which would not have occurred had Federal standards of such category applicable to model year 1975 remained the only standards of such category in effect, minus

[(ii) 0.5 mile per gallon.

[(D) Each of the following is a category of Federal standards;¹

[(i) Emissions standards under section 202 of the Clean Air Act, and emissions standards applicable by reason of section 209(b) of such Act.

[(ii) Motor vehicle safety standards under the National Traffic and Motor Vehicle Safety Act of 1966.

[(iii) Noise emission standards under section 6 of the Noise Control Act of 1972.

[(iv) Property loss reduction standards under title I of this Act.

[(E) In making the determination under this subsection, the Secretary (in accordance with such methods as he shall prescribe by rule) shall assume a production mix for such manufacturer which would have achieved the average fuel economy standard for such model year had standards described in subparagraph (D) applicable to model year 1975 remained the only standards in effect.

[(4) The Secretary may, for the purposes of conducting a proceeding under this subsection, consolidate one or more applications filed under this subsection.]

(d)(1) The Secretary shall determine the maximum feasible average fuel economy achievable for passenger automobiles, light trucks, or class of light trucks manufactured by any manufacturer (i) during model year 1996 through 2001 and (ii) during model year 2002 and thereafter by—

(A) determining, in accordance with subsection (e)(2), the maximum feasible average fuel economy (in miles per gallon) of all automobiles of such vehicle class manufactured by all manufacturers during such period;

(B) calculating the percentage increase in the average fuel economy of all automobiles of such vehicle class that the maximum feasible average fuel economy determined in paragraph (1) represents compared to the average fuel economy of all automobiles of such vehicle class manufactured in model year 1990 as determined in accordance with section 503; and

(C) increasing the average fuel economy of automobiles of such vehicle class manufactured by such manufacturer in model year 1990 by the percentage increase calculated in accordance with paragraph (2).

(2) The Secretary may apply different percentage increases to different vehicle classes, but shall apply the same percentage increase calculated under paragraph (1)(B) to all manufacturers of automobiles of such vehicle class.

[(e) For purposes of this section, in determining *maximum feasible average fuel economy*, the Secretary shall consider—

- [(1) technological feasibility;
- [(2) economic practicability;
- [(3) the effect of other Federal motor vehicle standards on fuel economy; and

[(4) the need of the Nation to conserve energy. For purposes of this subsection, the Secretary shall not consider the fuel economy of alcohol powered automobiles or natural gas powered automobiles, and the Secretary shall consider dual energy automobiles and natural gas dual energy automobiles to be operated exclusively on gasoline or diesel fuel.]

(e)(1) For purposes of subsections (a)(1), (b)(1), and (c), in determining *maximum feasible average fuel economy*, the Secretary shall consider—

- (A) technological feasibility;
- (B) economic practicability;
- (C) the effect of other Federal motor vehicle standards on fuel economy; and

(D) the need of the Nation to conserve energy.

(2) For purposes of subsections (a) (2) and (3), (b) (2) and (3), and (d), in determining the *maximum feasible average fuel economy* of all passenger automobiles, light trucks, or a class of light trucks, as the case may be, manufactured by all manufacturers during (i) model years 1996 through 2001 or (ii) model year 2002 and thereafter, the Secretary shall assume that, taken as a whole, the population of automobiles of such vehicle class manufactured by all manufacturers during such model year—

(A) uses all fuel-saving technologies and designs that are capable of being commercialized by the appropriate period, considering—

(i) the time at which improved or new technologies and designs could be introduced and the rates at which they might penetrate the market under existing industrial capabilities; and

(ii) any technical, financial, regulatory, organizational, and marketing limitations to deploying improved or new technologies by such period;

(B)(i) with respect to passenger automobiles, attains the same performance level (measured by the product of torque and axle ratio divided by curb weight) as passenger automobiles manufactured in model year 1990, taken as a whole; and

(ii) with respect to light trucks or class thereof, attains performance levels and utility comparable to such class manufactured in model year 1990;

(C) reflects the same size mix and interior volume as automobiles of such model type manufactured in model year 1990, taken as a whole;

(D) meets all applicable emission standards; and

(E) meets all applicable automobile safety standards.

(3) In determining *maximum feasible average fuel economy*, the Secretary shall not consider the alternative calculation for airbag-equipped passenger automobiles under section 503(a)(4).

(f)(1) The Secretary may, by rule, from time to time, amend any average fuel economy standard prescribed under subsection (a) [3](2), (b), or (c), so long as such standard, as amended, meets the requirements of subsection (a) [3](2), (b), or (c), as the case may be.

(2) Any amendment prescribed under this section which has the effect of making any average fuel economy standard more stringent shall be—

(A) promulgated, and

(B) [if required by paragraph (4) of subsection (a),] submitted to the Congress, at least 18 months prior to the beginning of the model year to which such amendment will apply.

(g)(1) At the election of any manufacturer, the fuel economy of any emergency vehicle shall not be taken into account in applying any fuel economy standard prescribed by or under subsection (a), (b), or (c). Any manufacturer electing to have the provisions of this subsection shall provide written notice of that election to the Secretary and to the [Environmental Protection Agency] EPA Administrator.

(2) For purposes of paragraph (1), the term "emergency vehicle" means any automobile manufactured primarily for use—

(A) as an ambulance or combination ambulance-hearse,

(B) by the United States or by a State or local government for police or other law enforcement purposes, or

(C) for other emergency uses prescribed by the Secretary of Transportation by regulation.

(h) [Proceedings under subsection (a)(4) or (d)] *Any proceeding to promulgate or amend a rule under this section* shall be conducted in accordance with section 553 of title 5, United States Code, except that interested persons shall be entitled to make oral as well as written presentations. A transcript shall be taken of any oral presentations.

(i) The Secretary shall consult with the Secretary of Energy in carrying out his responsibilities under this section. The Secretary shall, before issuing any notice proposing under subsection (a), (b), (d), or (f) of this section, to establish, reduce, or amend an average fuel economy standard, provide the Secretary of Energy with a period of not less than ten days from the receipt of the notice during which the Secretary of Energy may, upon concluding that the proposed standard would adversely affect the conservation goals set by the Secretary of Energy, provide written comments to the Secretary concerning the impacts of the proposed standard upon those goals. To the extent that the Secretary does not revise the proposed standard to take into account any comments by the Secretary of Energy regarding the level of the proposed standard, the Secretary shall include the unaccommodated comments in the notice.

(j) The Secretary shall, before taking action on any final standard under this section or any modification of or exemption from such standard, notify the Secretary of Energy and provide such Secretary with a reasonable period of time to comment thereon.

(k)(1) On the petition of any manufacturer for any model year beginning after model year 1981 and before model year 1986, the Sec-

retary may conduct an examination of the impacts on the manufacturer or a class of manufacturers of any standard under subsection (b) applicable to 4-wheel drive automobiles. If after consideration of the results of that examination the Secretary finds in accordance with paragraph (2) that the manufacturer has demonstrated that such manufacturer or class of manufacturers would not otherwise be able to comply with such standard for that model year as it applies to 4-wheel drive automobiles without causing severe economic impacts, such as plant closures or reduction in employment in the United States related to motor vehicle manufacturing, the Secretary shall, by order, make an adjustment or otherwise provide relief regarding—

(A) the manner by which the average fuel economy of that manufacturer or class of manufacturers is calculated for purposes of that standard as it applies to 4-wheel drive automobiles, or

(B) other aspects regarding the application of that standard to the manufacturer or class of manufacturers with respect to such automobiles to the extent consistent with the provisions of this title.

(2) Any finding by the Secretary under paragraph (1) shall be made (A) after notice and a reasonable opportunity for written or oral comment, and (B) after consideration of the benefits available under the amendments made by the Automobile Fuel Efficiency Act of 1980.

(3) The authority of the Secretary under this subsection to make any adjustment or provide other relief shall not be effective for any model year after model year 1985.

(4) The Secretary shall notify the Congress of any adjustment or other relief provided under this subsection in the first annual report submitted to the Congress under section 512 after the order is issued providing for that adjustment or relief.

(5)(A) Any final decision of the Secretary under this subsection shall be made, and notice thereof published in the Federal Register, not later than 120 days after the date of the petition involved. The Secretary may extend such period to a specified date if the Secretary publishes notice thereof in the Federal Register, together with the reasons for such extension. Any such decision by the Secretary shall become final 30 days after the publication of the notice of final decision unless a petition for judicial review is filed under subparagraph (B).

(B) Any person adversely affected by such a decision may, not later than 30 days after publication of notice of such decision, file a petition for review of such decision with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides, or in which the principal place of business of such person is located. The United States court of appeals involved shall have jurisdiction to review such decision in accordance with section 706(2) (A) through (D) of title 5, United States Code, and to affirm, remand, or set aside the decision of the Secretary. Except as otherwise provided in this subparagraph, section 504 (c) and (d) shall apply to such review to the same extent and manner as it applies with respect to review of any rule prescribed under this section or section 501, 503, or 506.

(6) The availability of any adjustment or other relief under this subsection shall not be taken into account in prescribing standards under subsection (b).

(1)(A) For purposes of this part, *credits* under this subsection shall be considered to be available to any manufacturer upon the completion of the model year in which such credits are earned under subparagraph (B) unless under subparagraph (C) the credits are made available for use at a time prior to the model year in which earned.

(B) Whenever the average fuel economy of the passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard established under subsection (a) or (c) (determined by the Secretary without regard to [any adjustment under subsection (d) or] any credit under this subsection), such manufacturer shall be entitled to a credit calculated under subparagraph (C), which—

(i) shall be available to be taken into account with respect to the average fuel economy of that manufacturer for any of the three consecutive model years immediately prior to the model year in which such manufacturer exceeds such applicable average fuel economy standard, and

[(ii) to the extent that such credit is not so taken into account pursuant to clause (i), shall be available to be taken into account with respect to the average fuel economy of that manufacturer for any of the three consecutive model year immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard.]

(ii) to the extent that such credit is not so taken into account pursuant to clause (i), shall be available to be taken into account with respect to the average fuel economy of that manufacturer—

(I) for any three consecutive model years immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard with respect to credits earned for exceeding average fuel economy standards for model years prior to 1996; and

(II) until used with respect to credits earned for exceeding average fuel economy standards for model years 1996 and thereafter.

(C)(i) At any time prior to the end of any model year, a manufacturer which has reason to believe that its average fuel economy for passenger automobiles will be below such applicable standard for that model year may submit a plan demonstrating that such manufacturer will earn sufficient credits under subparagraph (B) within the next 3 model years which when taken into account would allow the manufacturer to meet that standard for the model year involved.

(ii) Such credits shall be available for the model year involved subject to—

(I) the Secretary approving such plan; and

(II) the manufacturer earning such credits in accordance with such plan.

(iii) The Secretary shall approve any such plan unless the Secretary finds that it is unlikely that the plan will result in manufac-

turer earning sufficient credits to allow the manufacturer to meet the standard for the model year involved.

(iv) The Secretary shall provide notice to any manufacturer in any case in which the average fuel economy of that manufacturer is below the applicable standard under subsection (a) or (c), after taking into account credits available under subparagraph (B)(i), and afford the manufacturer a reasonable period (of not less than 60 days) in which to submit a plan under this subparagraph.

(D) The amount of credit to which a manufacturer is entitled under this paragraph shall be equal to—

(i) the number of tenths of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer in model year in which the credit is earned pursuant to this paragraph exceeds the applicable average fuel economy standard established under subsection (a) or (c), multiplied by

(ii) the total number of passenger automobiles manufactured by such manufacturer during such model year.

(E) The Secretary shall take credits into account for any model year on the basis of the number of tenths of a mile per gallon by which the manufacturer involved was below the applicable average fuel economy standard for that model year and the volume of passenger automobiles manufactured that model year by the manufacturer. Credits once taken into account for any model year shall not thereafter be available for any other model year. Prior to taking any credit into account, the Secretary shall provide the manufacturer involved with written notice and reasonable opportunity to comment thereon.

(2) Credits for manufacturers of automobiles [which are not passenger automobiles] *light trucks* shall be earned and be available to be taken into account for model years in which the average fuel economy of such [class of automobiles] *light trucks* is below the applicable average fuel economy standard established under subsection (b) to the same extent and in the same manner as provided for under paragraph (1). Not later than 60 days after the date of the enactment of this subsection, the Secretary shall prescribe regulations to carry out the provisions of this paragraph.

[(3) Whenever a civil penalty has been assessed and collected under section 508 from a manufacturer who is entitled to a credit under this subsection, the Secretary of the Treasury shall refund to such manufacturer the amount of the civil penalty so collected to the extent that penalty is attributable to credits available under this subsection.]

(3) Credits under this subsection may be transferred among manufacturers and among vehicle classes of a manufacturer in accordance with rules issued by the Secretary under paragraph (4).

(4) (A) The Secretary may prescribe rules for purposes of carrying out the provisions of this subsection.

(B) Not later than 24 months after the date of enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary shall issue rules implementing the credit trading system authorized by paragraph (4).

DETERMINATION OF AVERAGE FUEL ECONOMY

SEC. 503. (a)(1) Average fuel economy for purposes of section 502 (a) and (c) shall, *subject to paragraph (4)*, be calculated by the EPA Administrator by dividing—

(A) the total number of passenger automobiles manufactured in a given model year by a manufacture, by

(B) a sum of terms, each term of which is a fraction created by dividing—

(i) the number of passenger automobiles of a given model type manufactured by such manufacturer in such model year, by

(ii) the fuel economy measured for such model type.

(2) Average fuel economy for purposes of section 502(b) shall be calculated in accordance with rules of the EPA Administrator *that are based upon the method required by this section for calculation of average fuel economy of passenger automobiles.*

(3) In the event that a manufacturer manufactures electric vehicles, as defined in section 512(b)(2) (15 U.S.C. 2012(b)(2)), the average fuel economy will be calculated under 503(a)(1) and (2) to include equivalent petroleum based fuel economy values for various classes of electric vehicles in the following manner:

(A) The Secretary of Energy will determine equivalent petroleum based fuel economy values for various classes of electric vehicles. Determination of these fuel economy values will take into account the following parameters:

(i) the approximate electrical energy efficiency of the vehicles considering the vehicle type, mission, and weight;

(ii) the national average electricity generation and transmission efficiencies;

(iii) the need of the Nation to conserve all forms of energy, and the relative scarcity and value to the Nation of all fuel used to generate electricity;

(iv) the specific driving patterns of electric vehicles as compared with those of petroleum fueled vehicles.

(B) The Secretary of Energy will propose equivalent petroleum based fuel economy values within four months of enactment of the Act. Final promulgation of the values is required no later than six months after the proposal of the values.

(C) The Secretary of Energy will review these values on an annual basis and will propose revisions, if necessary.

(4)(A) *If a manufacturer manufactures small passenger automobiles which comply with Federal Motor Vehicle Safety Standard Number 208 by means of airbags for the driver seating position only or for both the driver and front seat outboard seating positions, average fuel economy for purposes of section 502(a) and (c) shall be calculated as provided under subsection (a)(1), except that in the calculation of the sum of terms under subsection (a)(1)(B) the term applicable to any model type of small passenger automobile for which there are automobiles so equipped with airbags shall be determined by adding—*

(i) the fraction that is created by dividing the number of small passenger automobiles of such model type that are

equipped with airbags for the driver seating position only, by 105 percent of the fuel economy measured for such model type,

(ii) the fraction that is created by dividing the number of small passenger automobiles of such model type that are equipped with airbags for both the driver and outboard front seating positions, by 110 percent of the fuel economy measured for such model type, and

(iii) the fraction that is created by dividing the number of small passenger automobiles of such model type that are not so equipped, by the fuel economy measured for such model type.

(B) For purposes of this paragraph, the term "small passenger automobile" means a passenger automobile (i) with a wheel base of less than 100 inches, or with a curb weight of 2,750 pounds or less, and (ii) whose measured fuel economy is at least 35 miles per gallon.

(b)(1) In calculating average fuel economy under subsection (a)(1), the EPA Administrator shall separate the total number of passenger automobiles manufactured by a manufacturer into the following two categories:

(A) Passenger automobiles which are domestically manufactured by such manufacturer and passenger automobiles which are included within this category pursuant to paragraph (3) (plus, in the case of model year 1978 and model year 1979, passenger automobiles which are within the includable base import volume of such manufacturer).

(B) Passenger automobiles which are not domestically manufactured by such manufacturer and which are not included in the domestic category pursuant to paragraph (3) (and which, in the case of model year 1978 and model year 1979, are not within the includable base import volume of such manufacturer).

The EPA Administrator shall calculate the average fuel economy of each such separate category, and each such category shall be treated as if manufactured by a separate manufacturer for purposes of this part.

For purposes of this subsection:

(A) The term "includable base import volume," with respect to any manufacturer in model year 1978 or 1979, as the case may be, is a number of passenger automobiles which is the lesser of—

- (i) the manufacturer's base import volume, or
- (ii) the number of passenger automobiles calculated by multiplying—

(I) the quotient obtained by dividing such manufacturer's base import volume by such manufacturer's base production volume, times.

(II) the total number of passenger automobiles manufactured by such manufacturer during such model year.

(B) The term "base import volume" means one-half the sum of—

- (i) the total number of passenger automobiles which were not domestically manufactured by such manufacturer during model year 1974 and which were imported by such manufacturer during such model year, plus

(ii) 133 percent of the total number of passenger automobiles which were not domestically manufactured by such manufacturer during the first 9 months of model year 1975 and which were imported by such manufacturer during such 9-month period.

(C) The term "base production volume" means on-half the sum of—

(i) the total number of passenger automobiles manufactured by such manufacturer during model year 1974, plus

(ii) 133 percent of the total number of passenger automobiles manufactured by such manufacturer during the first 9 months of model year 1975.

(D) For purposes of subparagraphs (B) and (C) of this paragraph any passenger automobile imported during model year 1976, but prior to July 1, 1975, shall be deemed to have been manufactured (and imported) during the first 9 months of model year 1975.

(E) An automobile shall be considered domestically manufactured in any model year if at least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in the United States or Canada, unless the assembly of such automobile is completed in Canada and such automobile is not imported into the United States prior to the expiration of 30 days following the end of such model year. The EPA Administrator may prescribe rules for purposes of carrying out this subparagraph.

(F) The fuel economy of each passenger automobile which is imported by a manufacturer is model year 1978 or any subsequent model year, as the case may be, and which is not domestically manufactured by such manufacturer, shall be deemed to be equal to the average fuel economy of all such passenger automobiles.

(3)(A) After consideration of a petition (and comments thereon) for an exemption from the provisions of paragraph (1) filed by a manufacturer, the Secretary shall, by order, grant an exemption from such provisions for passenger automobiles manufactured by that manufacturer during the period provided for in such order, unless the Secretary finds, after notice and reasonable opportunity for written or oral comment, that the proposed exemption would, for such period, result in reduced employment in the United States related to motor vehicle manufacturing.

(B) Any exemption granted under subparagraph (A) shall be effective for a period of 5 model years or, at the request of the manufacturer, such longer period as the Secretary may provide, as specified in the order.

(C) An exemption granted under subparagraph (A) for any manufacturer shall not be effective unless the manufacturer—

(i) began automobile production or assembly in the United States after December 22, 1975, and before May 1, 1980; or

(ii) began automobile production or assembly in the United States on or after May 1, 1980, and has engaged in such production or assembly in the United States for at least one model year ending on or after December 31, 1985.

(D)(i) Any decision by the Secretary to grant or deny an exemption under subparagraph (A) shall be made, and notice thereof published in the Federal Register, not later than 90 days after the date of the petition for that exemption. The Secretary may extend such period to a specified date if the Secretary publishes notice thereof in the Federal Register, together with the reasons for such extension. In no event may such period be extended beyond the 150th day after the date of the petition for such exemption.

(ii) The period for written or oral comment provided in subparagraph (A) for any petition shall end not later than 60 days after the filing of the petition, except that such period may be extended by the Secretary for not to exceed an additional 30 days. If the Secretary fails to make a decision pursuant to this paragraph within the period for a decision in clause (i)—

(I) the petition shall be deemed to have been granted; and

(II) the Secretary, within 30 days after the end of such decision period, shall submit a written statement to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on [Interstate and Foreign Commerce] *Energy and Commerce* of the House of Representatives setting forth the reasons for failing to decide within such decision period.

(E)(i) Any person adversely affected by a decision of the Secretary denying or granting an exemption pursuant to this paragraph may, not later than 30 days after publication of the notice of such decision, file a petition of review of such decision in the United States Court of Appeals for the District of Columbia. Such court shall have exclusive jurisdiction to review such decision, in accordance with section 706(2) (A) through (D) of title 5, of the United States Code, and to affirm, remand, or set aside the decision of the Secretary.

(ii) Any such proceeding shall be assigned for a hearing and completed at the earliest possible date and shall be expedited in every possible way by such court. The court shall render its decision in any such proceeding within 60 days after the date of filing the petition for review unless the court determines that a longer period of time is necessary to satisfy the requirements of the Constitution of the United States.

(iii) The judgment of the court affirming, remanding, or setting aside, in whole or in part, any such decision shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. Application therefor shall be made within 30 days after entry of such judgment.

(iv) Notwithstanding any other provision of law, a decision of the Secretary on an exemption pursuant to this paragraph shall not be subject to judicial or administrative review except as provided in this paragraph.

(F) Notwithstanding section 502(l), in the case of any model year for which an exemption under this subsection is effective for any manufacturer—

(i) no credit may be earned under section 502(l)(1)(B) by the manufacturer; and

(ii) no credit may be earned under section 502(l)(1)(C) for the manufacturer.

(4)(A) If a plan has been submitted by a manufacturer and approved by the Secretary under subparagraph (B), the EPA Administrator shall for each for the four model years covered by such plan include under paragraph (1)(A) (and exclude under paragraph (1)(B)) with respect to that manufacturer not more than 150,000 passenger automobiles which are manufactured by that manufacturer but which do not qualify as domestically manufactured if—

(i) the model type or types involved have not previously been domestically manufactured;

(ii) at least 50 percent of the cost to the manufacturer of each such automobile is attributable to value added in the United States or Canada;

(iii) in the case of any such automobile the assembly of which is completed in Canada, that automobile is imported into the United States not later than 30 days following the end of the model year involved; and

(iv) such automobile model type or types are domestically manufactured before the close of the fourth model year covered by such plan.

(B)(i) A manufacturer may submit to the Secretary for approval a plan, including supporting material, which shall set forth the actions, and the dates by which such actions are to be taken, which will assure that the automobile model type or types referred to in subparagraph (A) will be domestically manufactured before the end of the fourth model year covered by such plan.

(ii) The Secretary shall promptly consider and act upon any plan submitted under this subparagraph. The Secretary shall approve any such plan unless—

(I) the Secretary finds that the plan is inadequate to meet the requirements of this paragraph, or

(II) the manufacturer has previously submitted a plan which has been approved, by the Secretary under this paragraph.

(C) This paragraph shall only apply with respect to model years beginning after model year 1980.

(c) Any reference in this part to automobiles manufactured by a manufacturer shall be deemed—

(1) to include all automobiles manufactured by persons who control, are controlled by, or are under common control with, such manufacturer; and

(2) to exclude all automobiles manufactured (within the meaning of paragraph (1)) during a model year by such manufacturer which are exported prior to the expiration of 30 days following the end of such model year.

(d)(1) Fuel economy for any model type shall be measured, and average fuel economy of a manufacturer shall be calculated, in accordance with testing and calculation procedures established by the EPA Administrator, by rule. Procedure so established with respect to passenger automobiles (other than for purposes of section 506) shall be the procedures utilized by the EPA Administrator for model year 1975 (weighed 55 percent urban cycle, and 45 percent highway cycle), or procedures which yield comparable results. Procedures under this subsection, to the extent practicable, shall require that fuel economy tests be conducted in conjunction with emission tests conducted under section 206 of the Clean Air Act.

The EPA Administrator shall report any measurements of fuel economy and any calculations of average fuel economy to the Secretary.

(2) The EPA Administrator shall, by rule, determine the quantity of any other fuel which is the equivalent of one gallon of gasoline.

(3) Testing and calculation procedures applicable to a model year, and any amendment to such procedures (other than a technical or clerical amendment), shall be promulgated not less than 12 months prior to the model year to which such procedures apply.

(e) For purposes of this part (other than section 506), any measurement of fuel economy of a model type, and any calculation of average fuel economy of a manufacturer, shall be rounded off to the nearest one-tenth mile per gallon (in accordance with rules of the EPA Administrator).

(f) The EPA Administrator shall consult and coordinate with the Secretary in carrying out his duties under this section.

JUDICIAL REVIEW

SEC. 504. (a) Any person who may be adversely affected by any rule prescribed under section 501, 502, 503, or 506 may, at any time prior to 60 days after such rule is prescribed [(or in the case of an amendment submitted to each House of the Congress under section 502(a)(4), at any time prior to 60 days after the expiration of the 60-day period specified in section 502(a)(5))], file a petition in the United States Court of Appeals for the District of Columbia, or for any circuit wherein such person resides or has his principal place of business, for judicial review of such rule. A copy of the petition shall forthwith be transmitted by the clerk of such court to the officer who prescribed the rule. Such officer shall thereupon cause to be filed in such court the written submissions and other materials in the proceeding upon which such rule was based. Upon the filing of such petition, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. Findings of the Secretary under section 502(d) shall be set aside by the court on review unless such findings are supported by substantial evidence.

(b) If the petitioner applies to the court in a proceeding under subsection (a) for leave to make additional submissions, and shows to the satisfaction of the court that such additional submissions are material and that there were reasonable grounds for the failure to make such submissions in the administrative proceeding, the court may order the Secretary or the EPA Administrator, as the case may be, to provide additional opportunity to make such submissions. The Secretary or the EPA Administrator, as the case may be, may modify or set aside the rule involved or prescribe a new rule by reason of the additional submissions, and shall file any such modified or new rule in the court, together with such additional submissions. The court shall thereafter review such new or modified rule.

(c) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(d) The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

INFORMATION AND REPORTS

SEC. 505. (a)(1) Each manufacturer shall submit a report to the Secretary during the 30-day period preceding the beginning of each model year after model year 1977, and during the 30-day period beginning on the 180th day of each such model year. Each such report shall contain (A) a statement as to whether such manufacturer will comply with average fuel economy standards under section 502 applicable to the model year for which such report is made; (B) a plan which describes the steps the manufacturer has taken or intends to take in order to comply with such standards; and (C) such other information as the Secretary may require.

(2) Whenever a manufacturer determines that a plan submitted under paragraph (1) which he stated was sufficient to insure compliance with applicable average fuel economy standards is not sufficient to insure such compliance, he shall submit a report to the Secretary containing a revised plan which specifies any additional measures which such manufacturer intends to take in order to comply with such standards, and a statement as to whether such revised plan is sufficient to insure such compliance.

(3) The Secretary shall prescribe rules setting forth the form and content of the reports required under paragraphs (1) and (2).

(4) The provisions of this subsection shall not apply to any manufacturer for any model year for which that manufacturer is subject to an alternative average fuel economy standard under section 502(c).

(b)(1) For the purpose of carrying out the provisions of this part, the Secretary or the EPA Administrator, or their duly designated agents, may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpoena, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, the EPA Administrator, or such agents deem advisable. The Secretary or the EPA Administrator may require, by general or special orders that any person—

(A) file, in such form as the Secretary or EPA Administrator may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary or the EPA Administrator under this part, and

(B) provide the Secretary, the EPA Administrator, or their duly designated agents, access to (and for the purpose of examination, the right to copy) any documentary evidence of such person which is relevant to any function of the Secretary or the EPA Administrator under this part.

Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary or the EPA Administrator within such reasonable period as either may prescribe.

(2) The district courts of the United States for a judicial district in the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a duly authorized subpoena or

order of the Secretary, the EPA Administrator, or a duly designated agent of either, issued under paragraph (1), issue an order requiring compliance with such subpoena or order. Any failure to obey such an order of the court may be treated by such court as a contempt thereof.

(3) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c)(1) Every manufacturer shall establish and maintain such records, make such reports, conduct such tests, and provide such items and information as the Secretary or the EPA Administrator may, by rule, reasonably require to enable to Secretary or the EPA Administrator to carry out their duties under this part and under any rules prescribed pursuant to this part. Such manufacturer shall, upon request of a duly designated agent of the Secretary or the EPA Administrator who presents appropriate credentials, permit such agent, at reasonable times and in a reasonable manner, to enter the premises of such manufacturer to inspect automobiles and appropriate books, papers, records, and documents. Such manufacturer shall make available all of such items and information in accordance with such reasonable rules as the Secretary or the EPA Administrator may prescribe.

(2) The district courts of the United States may, if a manufacturer refuses to accede to any rule or reasonable request made under paragraph (1), issue an order requiring compliance with such requirement or request. Any failure to obey such an order of the court may be treated by such court as a contempt thereof (taking into account paragraph (3) of this subsection).

(3) As used in this section, the term "automobile" includes any automobile with a gross vehicle weight rating of 8,500 pounds or less, notwithstanding any lack of determination required of the Secretary under section 501(1)(B)(ii) or (iii).

(d)(1) The Secretary and the EPA Administrator shall each disclose any information obtained under this part (other than section 503(d)) to the public in accordance with section 552 of title 5, United States Code, except that information may be withheld from disclosure under subsection (b)(4) of such section only if the Secretary or the EPA Administrator, as the case may be, determines that such information, if disclosed, would result in significant competitive damage. Any matter described in section 552(b)(4) relevant to any administrative or judicial proceeding under this part may be disclosed in such proceeding.

(2) Measurements and calculations under section 503(d) shall be made available to the public in accordance with section 552 of title 5, United States Code, without regard to subsection (b) of such section.

LABELING

SEC. 506. (a)(1) Except as otherwise provided in paragraph (2), each manufacturer shall cause to be affixed, and each dealer shall cause to be maintained, on each automobile manufactured in any model year after model year 1976, in a prominent place, a label—

(A) indicating—

- (i) the fuel economy of such automobile,
- (ii) the estimated annual fuel cost associated with the operation of such automobile, and
- (iii) the range of fuel economy of comparable automobiles (whether or not manufactured by such manufacturer),

as determined in accordance with rules of the EPA Administrator,

(B) containing a statement that written information (as described in subsection (b)(1)) with respect to the fuel economy of other automobiles manufactured in such model year (whether or not manufactured by such manufacturer) is available from the dealer in order to facilitate comparison among the various model types,

(C) containing in the case of any automobile, the sale of which is subject to any Federal tax imposed with respect to automobile fuel efficiency, a statement indicating the amount of such tax, and

(D) containing any other information authorized or required by the EPA Administrator which relates to information described in subparagraph (A) or (B).

(2) With respect to automobiles—

(A) for which procedures established in the EPA and FEA Voluntary Fuel Labeling Program for Automobiles exist on the date of the enactment of this title, and

(B) which are manufactured in model year 1976 and at least 90 days after such date of enactment, each manufacturer shall cause to be affixed, and each dealer shall cause to be maintained, in a prominent place, a label indicating the fuel economy of such automobile, in accordance with such procedures.

(3) The form and content of the labels required under paragraphs (1) and (2), and the manner in which such labels shall be affixed, shall be prescribed by the EPA Administrator by rule. The time and manner by which the statement referred to in paragraph (1)(C) must be included on any label may be prescribed so as to take into account any special circumstances or characteristics. The EPA Administrator may permit a manufacturer to comply with this paragraph by permitting such manufacturer to disclose the information required under this subsection on the label required by section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).

(b)(1) The EPA Administrator shall compile and prepare a simple and readily understandable booklet containing data on fuel economy of automobiles manufactured in each model year. Such booklet shall also contain information with respect to estimated annual fuel costs, and may contain information with respect to geographical or other differences in estimated annual fuel costs. The [Administrator of the Federal Energy Administration] Secretary of Energy shall publish and distribute such booklets. *During the 12-month period beginning on the first day of the first month after the date of enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary of Energy shall distribute no less than 100 booklets each year to each dealer and shall distribute as many in addition to 100 booklets as are reasonably requested by dealers from time to time.*

(2) The EPA Administrator, not later than July 31, 1976, shall prescribe rules requiring dealers to make available to prospective purchasers information compiled by the EPA Administrator under paragraph (1).

(c)(1) A violation of subsection (a) shall be treated as a violation of section 3 of Automobile Information Disclosure Act (15 U.S.C. 1232). For purposes of the Federal Trade Commission Act (other than sections 5(m) and (18)), a violation of subsection (a) shall be treated as an unfair or deceptive act or practice in or affecting commerce.

(2) As used in this section, the term "dealer" has the same meaning as such term has in section 2(e) of the Automobile Information Disclosure Act (15 U.S.C. 1231(e)) except that in applying such term to this section, the term "automobile" has the same meaning as such term has in section 501(1) of this part (taking into account paragraph (3) of this subsection).

(3) As used in this section, the term "automobile" includes any automobile with a gross vehicle weight rating of 8,500 pounds or less, notwithstanding any lack of determination required of the Secretary under section 501(1)(B) (ii) or (iii).

(d) Any disclosure with respect to fuel economy or estimated annual fuel cost which is required to be made under the provisions of this section shall not create an express or implied warranty under State or Federal law that such fuel economy will be achieved, or that such cost will not be exceeded, under conditions of actual use.

(e) In carrying out his duties under this section, the EPA Administrator shall consult with the Federal Trade Commission, the Secretary, and the [Federal Energy Administrator.] *Secretary of Energy.*

[UNLAWFUL CONDUCT]

[SEC. 507. (a) Subject to subsection (b), the following conduct is unlawful:

[(1) the failure of any manufacturer to comply with any average fuel economy standard applicable to such manufacturer under section 502 (other than section 502(b)),

[(2) the failure of any manufacturer to comply with any average fuel economy standard applicable to such manufacturer under section 502(b), or

[(3) the failure of any person (A) to comply with any provision of this part applicable to such person (other than section 502, 506(a), 510, or 511), or (B) to comply with any standard, rule, or order applicable to such person which is issued pursuant to such a provision.

[(b) A manufacturer shall not be considered to have engaged in unlawful conduct, or to have failed to comply with any fuel economy standard applicable to such manufacturer under section 502, if the average fuel economy of such manufacturer, after taking into account the credits then available to the manufacturer under section 502(1), would result in the applicable standard being met or exceeded.]

EXCESSIVE FUEL CONSUMPTION FEE

SEC. 507. (a) If the average fuel economy calculations reported by the EPA Administrator to the Secretary under section 503(d) indicate that the average fuel economy of any manufacturer does not meet the applicable average fuel economy standards established under section 502 (a), (b), or (c), the Secretary shall assess the manufacturer an excessive fuel consumption fee in an amount determined under section 508.

(b) The amount of the fee shall be assessed by the Secretary by written notice.

(c)(1) Not later than 30 days after a determination by the Secretary under subsection (a) that a manufacturer has failed to meet any applicable average fuel economy standard under section 502, such manufacturer may apply to the Federal Trade Commission for a certification under this subsection. If the manufacturer shows and the Federal Trade Commission determines that reduction of the fee which the Secretary shall otherwise assess is necessary to prevent a substantial lessening of competition in that segment of the automobile industry subject to the standard with respect to which such fee is assessed, the Commission shall so certify. The certification shall specify the maximum amount that such fee may be reduced. To the maximum extent practicable, the Commission shall render a decision with respect to an application under this subsection not later than 90 days after the application is filed with the Commission. A proceeding under this subsection shall not have the effect of delaying the manufacturer's liability under this section for a fee for more than 90 days after such application is filed, but any payment made before a decision of the Commission under this subsection becomes final shall be paid to the court in which the fee is collected, and shall (except as otherwise provided in paragraph (2)) be held by such court, until 90 days after such decision becomes final (at which time it shall be paid into the general fund of the Treasury).

(2) Whenever a fee has been assessed and collected from a manufacturer under this section, and is being held by a court in accordance with paragraph (1), and the Secretary subsequently determines to reduce such fee pursuant to section 508(c), the Secretary shall direct the court to remit the appropriate amount of the fee to such manufacturer.

(d) Any manufacturer assessed a fee under this section may obtain review of a determination (i) of the Secretary to assess such fee or (ii) of the Federal Trade Commission under subsection (c) in the United States Court of Appeals for the District of Columbia Circuit, or for any circuit wherein the manufacturer resides or has his principal place of business. Such review may be obtained by filing a notice of appeal in such court within 30 days after the date of such determination, and by simultaneously sending a copy of such notice by certified mail to the Secretary or the Federal Trade Commission, as the case may be. The Secretary or the Commission, as the case may be, shall promptly file in such court a certified copy of the record upon which such determination was made. Any such determination shall be reviewed in accordance with chapter 7 of title 5, United States Code.

(2) *If any manufacturer fails to pay a fee after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Attorney General shall recover the amount for which the manufacturer is liable in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order assessing the fee shall not be subject to review.*

(e) *A claim of the United States for a fee assessed against a manufacturer under this section shall, in the case of the bankruptcy or insolvency of such manufacturer, be subordinate to any claim of a creditor of such manufacturer which arises from an extension of credit before the date on which the judgment in any collection action under this section becomes final (without regard to subsection (d)).*

[CIVIL PENALTY]

[SEC. 508. (a)(1)] If average fuel economy calculations reported under section 503(d) indicate that any manufacturer has violated section 507(a) (1) or (2), then (unless further measurements of fuel economy, further calculations of average fuel economy, or other information indicates there is no violation of section 507(a) (1) or (2)) the Secretary shall commence a proceeding under paragraph (2) of this subsection. The results of such further measurements, further calculations, and any such other information, shall be published in the Federal Register.

[(2)] If, on the record after opportunity for agency hearing, the Secretary determines that such manufacturer has violated section 507(a) (1) or (2), or that any person has violated section 507(a)(3), the Secretary shall assess the penalties provided for under subsection (b). Any interested person may participate in any proceeding under this paragraph.

[(b)(1)(A)] Any manufacturer whom the Secretary determines under subsection (a) to have violated a provision of section 507(a)(1) with respect to any model year, shall be liable to the United States for a civil penalty equal to the amount obtained by multiplying \$5 by (i) the number of tenths of a mile per gallon by which the average fuel economy of passenger automobiles manufactured by such manufacturer during such model year is exceeded by the applicable average fuel economy standard established under section 502 (a) and (c), multiplied by the number of passenger automobiles manufactured by such manufacturer during such model year, reduced by (ii) the credits then available under section 502(1) for such model year.

[(B)] Any manufacturer whom the Secretary determines under subsection (a) to have violated section 507(a)(2) shall be liable to the United States for a civil penalty equal to the amount obtained by multiplying \$5 by (i) the number of tenths of a mile per gallon by which the applicable average fuel economy standard exceeds the average fuel economy of automobiles to which such standard applies, and which are manufactured by such manufacturer during the model year in which the violation occurs, multiplied by the number of automobiles to which such standard applies and which are manufactured by such manufacturer during such model year,

reduced by (ii) the credits then available under section 502(1) for such model year.

[(2) Any person whom the Secretary determines under subsection (a) to have violated a provision of section 507(a)(3) shall be liable to the United States for a civil penalty of not more than \$10,000 for each violation. Each day of a continuing violation shall constitute a separate violation for purposes of this paragraph.

[(3) The amount of such civil penalty shall be assessed by the Secretary by written notice. The Secretary shall have the discretion to compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection against any person, except that any civil penalty assessed for a violation of section 507(a) (1) or (2) may be so compromised, modified, or remitted only to the extent—

[(A) necessary to prevent the insolvency or bankruptcy of such manufacturer,

[(B) such manufacturer shows that the violation of section 507(a) (1) or (2) resulted from an act of God, a strike, or a fire, or

[(C) the Federal Trade Commission has certified that modification of such penalty is necessary to prevent a substantial lessening of competition, as determined under paragraph (4).

[The Attorney General shall collect any civil penalty for which a manufacturer is liable under this subsection in a civil action under subsection (c)(2) (unless the manufacturer pays such penalty to the Secretary).

[(4) Not later than 30 days after a determination by the Secretary under subsection (a)(2) that a manufacturer has violated section 507(a) (1) or (2), such manufacturer may apply to the Federal Trade Commission for a certification under this paragraph. If the manufacturer shows and the Federal Trade Commission determines that modification of the civil penalty for which such manufacturer is otherwise liable is necessary to prevent a substantial lessening of competition in that segment of the automobile industry subject to the standard with respect to which such penalty was assessed, the Commission shall so certify. The certification shall specify the maximum amount that such penalty may be reduced. To the maximum extent practicable, the Commission shall render a decision with respect to an application under this paragraph not later than 90 days after the application is filed with the Commission. A proceeding under this paragraph shall not have the effect of delaying the manufacturer's liability under this section for a civil penalty for more than 90 days after such application is filed, but any payment made before a decision of the Commission under this paragraph becomes final shall be paid to the court in which the penalty is collected, and shall (except as otherwise provided in paragraph (5)) to be held by such court, until 90 days after such decision becomes final (at which time it shall be paid into the general fund of the Treasury).

[(5) Whenever a civil penalty has been assessed and collected from a manufacturer under this section, and is being held by a court in accordance with paragraph (4), and the Secretary subsequently determines to modify such civil penalty pursuant to para-

graph (3)(C) the Secretary shall direct the court to remit the appropriate amount of such penalty to such manufacturer.

[(6) A claim of the United States for a civil penalty assessed against a manufacturer under subsection (b)(1) shall, in the case of the bankruptcy or insolvency of such manufacturer, be subordinate to any claim of a creditor of such manufacturer which arises from an extension of credit before the date on which the judgment in any collection action under this section becomes final (without regard to paragraph (4)).

[(c)(1) Any interested person may obtain review of a determination (A) of the Secretary pursuant to which a civil penalty has been assessed under subsection (b), or (B) of the Federal Trade Commission under subsection (b)(4), in the United States Court of Appeals for the District of Columbia, or for any circuit wherein such person resides or has his principal place of business. Such review may be obtained by filing a notice of appeal in such court within 30 days after the date of such determination, and by simultaneously sending a copy of such notice by certified mail to the Secretary or the Federal Trade Commission, as the case may be. The Secretary or the Commission, as the case may be, shall promptly file in such court a certified copy of the record upon which such determination was made. Any such determination shall be reviewed in accordance with chapter 7 of title 5, United States Code.

[(2) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Attorney General shall recover the amount for which the manufacturer is liable in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

[(d)(1)(A) The Secretary shall, by rule in accordance with the provisions of this subsection and subsection (e), substitute a higher amount for the amount per tenth of a mile per gallon which would be used to calculate the civil penalty under subsection (b)(1) in the absence of such rule, if the Secretary finds that—

—[(i) the additional amount of the civil penalty which may be imposed under such rule will result in, or substantially further, substantial energy conservation for automobiles in future model years for which such higher penalty may be imposed; and

[(ii) subject to subparagraph (B), such additional amount of civil penalty will not result in substantial deleterious impacts on the economy of the United States or of any State or region of any State.

[(B) Any findings under subparagraph (A)(ii) may be made only if the Secretary finds that it is likely that—

[(i) such additional amount of civil penalty will not cause a significant increase in unemployment in any State or region thereof;

[(ii) such additional amount will not adversely affect competition; and

[(iii) such additional amount will not cause a significant increase in automobile imports.

[(2) Any rule under paragraph (1) may not provide that the amount per tenth of a mile per gallon used to calculate the civil penalty under subsection (b)(1) be less than \$5.00 or more than \$10.00.

[(3) Any rule prescribed under paragraph (1) shall be effective for the later of—

[(A) automobile model years beginning after model year 1981, or

[(B) automobile model years beginning at least 18 months after such rule becomes final.]

AMOUNT OF THE EXCESSIVE FUEL CONSUMPTION FEE

SEC. 508. (a)(1) The Secretary shall determine the amount of the excessive fuel consumption fee to be assessed under section 507 with respect to passenger automobiles manufactured in any model year by multiplying the base fee provided in subsection (b) by (i) the number of tenths of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer during such model year is exceeded by the applicable average fuel economy standard established under section 502 (a) or (c), multiplied by the number of passenger automobiles manufactured by such manufacturer during such model year, reduced (at the election of the manufacturer) by (ii) credits available under section 502(1) for such model year.

(2) The Secretary shall determine the amount of the excessive fuel consumption fee to be assessed under section 507 with respect to light trucks manufactured in any model year by multiplying the base fee provided in subsection (b) by (i) the number of tenths of a mile per gallon by which the applicable average fuel economy exceeds the average fuel economy of the light trucks manufactured by such manufacturer during such model year, multiplies by the number of light trucks to which such standard applies manufactured by such manufacturer during such model year, reduced (at the election of the manufacturer) by (ii) credits available under section 502(1) for such model year.

(b) For purposes of calculating the amount of any civil penalty under this section, the amount of the base fee shall be—

For model years:

<i>Prior to 1993.....</i>	<i>\$5.00</i>
<i>1993.....</i>	<i>\$10.00</i>
<i>1996.....</i>	<i>\$20.00</i>
<i>1997 and thereafter.....</i>	

The amount of the fee applicable in the prior model year as adjusted in accordance with the annual implicit price deflator for the gross national product during such model year

(c) The Secretary shall have the discretion to reduce the amount of the fee calculated under this section only to the extent—

(1) necessary to prevent the insolvency or bankruptcy of the manufacturer,

(2) such manufacturer shows that its failure to meet the standards of section 502 resulted from an act of God, a strike, or a fire, or

(3) the Federal Trade Commission has certified that reduction of such fee is necessary to prevent a substantial lessening of competition, as determined under section 507(c).

(d)(1)(A) The Secretary shall, by rule in accordance with the provisions of this subsection and subsection (e), substitute a higher amount for the amount of the base fee which would be used to calculate the fee under subsection (a) in the absence of such rule, if the Secretary finds that—

(i) the additional amount of the fee which may be imposed under such rule will result in, or substantially further, substantial energy conservation for automobiles in future model years for which such higher fee may be imposed; and

(ii) subject to subparagraph (B), such additional amount of fee will not result in substantial deleterious impacts on the economy of the United States or any State or region of any State.

(B) Any findings under subparagraph (A)(ii) may be made only if the Secretary finds that it is likely that—

(i) such additional amount of fee will not cause a significant increase in unemployment in any State or region thereof;

(ii) such additional amount will not adversely affect competition; and

(iii) such additional amount will not cause a significant increase in automobile imports.

(2) Any rule under paragraph (1) may not provide that the amount per tenth of a mile per gallon used to calculate the fee under subsection (a) be less than the base fee or more than twice the base fee provided by subsection (b).

(e)(1)(A) After the Secretary of Transportation develops a proposed rule pursuant to subsection (d), he shall publish such proposed rule in the Federal Register, together with a statement of the basis for such rule, and provide copies thereof to the manufacturers. He shall then provide a period of public comment on such rule of at least 45 days for written comments thereon. A copy of any such proposed rule shall be transmitted by the Secretary to the Federal Trade Commission and the Secretary shall request such Commission to comment thereon within the period provided to the public concerning such proposed rule.

(B) After such written comment period, any interested person (including the Federal Trade Commission) shall be afforded an opportunity to present oral data, views, and arguments at a public hearing concerning such proposal. At such hearing such interested person (including the Federal Trade Commission) shall have an opportunity to question—

(i) other interested persons who make oral presentations,

(ii) employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or in the consideration thereof, and

(iii) experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation;

with respect to disputed issues of material fact, except that the Secretary may restrict questioning if he determines that such ques-

tioning is duplicative or is not likely to result in a timely and effective resolution of such issues. Any oral or documentary evidence may be received, but the Secretary as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(C) A rule subject to this subsection may not be issued except on consideration of the whole record supported by, and in accordance with, the reliable, probative, and substantial evidence.

(D) A transcript shall be kept of any such public hearing made in accordance with this section and such transcripts and written comments shall be available to the public at the cost of reproduction.

(2) If any final rule is prescribed by the Secretary after such public comment period under subsection (d) it shall be published in the Federal Register, together with each of the findings required by subsection (d).

(3)(A) Any person aggrieved by any final rule under subsection (d) may at any time before the 60th day after the date such rule is published under paragraph (2) file a petition with the United States Court of Appeals for the circuit wherein such person resides, or has his principal place of business, for judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the written submissions to, and transcript of, the written and oral proceedings on which the rule was based, as provided in section 2112 of title 28, United States Code.

(B) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. No rule may be affirmed unless supported by substantial evidence.

(C) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(4) In the case of any information which is provided the Secretary or the court during the consideration and review of any such rule and which is determined to be confidential by the Secretary pursuant to the provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974, any disclosure of such information by an officer or employee of the United States or of any department or agency thereof, except in an in camera proceeding by the Secretary or the court, shall be deemed a violation of section 1905 of title 18, United States Code.

(f)(1) There is hereby established in the Treasury of the United States a separate fund, to be known as the Excessive Fuel Consumption Fund. The Fund shall consist of all fees collected by the Secretary under this section.

(2) Subject to appropriation, the Secretary of Energy may make expenditures from the Fund for purposes of—

(A) providing financial assistance to the States in accordance with section 514; and

(B) funding other energy conservation programs, to the extent that the amount available in the Fund exceeds the amount needed under subparagraph (A).

(3) *The Secretary of the Treasury shall hold the Fund and, after consulting with the Secretary of Transportation and the Secretary of Energy, shall report annually to the Congress on the financial condition and operations of the Fund during the preceding fiscal year. The budget of the Fund shall be included in the Budget of the United States Government.*

* * * * *

SCRAPPAGE OF OLDER VEHICLES

SEC. 514. (a) *The Secretary of Energy shall provide financial assistance to State programs encouraging the voluntary removal from use and the marketplace pre-1980 model year automobiles.*

(b)(1) *Within 180 days after the enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary of Energy, after consulting with the EPA Administrator, shall adopt rules necessary to review and approve State programs that qualify for financial assistance under subsection (a).*

(2) *Any rules adopted by the Secretary of Energy under paragraph (1) shall require that to qualify for federal assistance under subsection (a) at least 50 percent of the cost of the program be paid for from State or private funds.*

(c) *The Secretary of Energy is authorized, subject to appropriation, to make expenditures from the Excessive Fuel Consumption Fund for purposes of this section.*

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ENERGY POLICY AND CONSERVATION ACT

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STATEMENT OF PURPOSES

SEC. 2. The purposes of this Act are—

(1) to grant specific standby authority to the President, subject to congressional review, to impose rationing, to reduce demand for energy through the implementation of energy conservation plans, and to fulfill obligations of the United States under the international energy program;

(2) to provide for the creation of a Strategic Petroleum Reserve capable of reducing the impact of severe energy supply interruptions;

(3) to increase the supply of fossil fuels in the United States, through price incentives and production requirements;

(4) to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses;

(5) to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products;

(6) to reduce the demand for petroleum products and natural gas through programs designed to provide greater availability and use of this Nation's abundant coal resources; [and]

(7) to provide a means for verification of energy data to assure the reliability of energy data[.] ; and

(8) to conserve energy and water by improving the water efficiency of showerheads.

TITLE I—MATTERS RELATED TO DOMESTIC SUPPLY AVAILABILITY

PART J—ENCOURAGING THE USE OF ALTERNATIVE FUELS

ALTERNATIVE FUEL USE BY LIGHT DUTY FEDERAL VEHICLES

SEC. 400AA. (a) DEPARTMENT OF ENERGY PROGRAM.—(1) Beginning in the fiscal year ending September 30, 1990, the Secretary shall ensure, with the cooperation of other appropriate agencies and consistent with other Federal law, that the maximum number practicable of the passenger automobiles and light duty trucks acquired annually for use by the Federal Government shall be alcohol powered vehicles, dual energy vehicles, natural gas powered vehicles, [or natural gas dual energy vehicles.] *natural gas dual energy vehicles, electric vehicles, or electric-hybrid vehicles.*

TITLE II—STANDBY ENERGY AUTHORITIES

PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY PROGRAM

SEC. 256. (a)

(c)(2)(C)

and (iii) information on the specific renewable energy and energy efficiency technology needs of lesser-developed countries, the technical and economic competitiveness of various renewable energy and energy efficiency resource products, processes and technologies, and the status of ongoing technology assistance programs shall be provided. Information from this program shall be made available to industry, Federal and multilateral lending agencies, nongovernmental organizations, host-country and donor-agency officials, and such others as the Secretary deems necessary.

[(d)(1) There shall be established an interagency working group which, in consultation with the representative industry groups and relevant agency heads, shall make recommendations to coordinate the actions and programs of the Federal Government affecting commerce in renewable energy products and related services. The Secretary of Energy shall be the chairman of such group. The heads of appropriate agencies may detail such personnel and may

furnish such services to such working group, with or without reimbursement, as may be necessary to carry out its functions

[(2) the interagency group shall establish a program to inform other countries of the benefits of policies that would allow small facilities which produce renewable energy to compete effectively with producers of energy from nonrenewable sources.]

(d)(1) DUTIES.—There shall be established two interagency working groups (hereafter in this subsection referred to as the Committee on Renewable Energy Commerce and Trade (CORECT) and the Committee on Energy Efficiency Commerce and Trade (COEECT)). These interagency working groups shall, in consultation with the representative industry groups and relevant agency heads, make recommendations to coordinate the actions and programs of the Federal government to promote the export of domestic renewable energy and energy efficiency products and technologies, respectively. The Secretary of Energy shall chair each group. The heads of appropriate agencies may detail such personnel and may furnish such services to such working group, with or without reimbursement, as may be necessary to carry out their functions and undertake other actions or activities, consistent with existing laws and regulation, as, in the judgment of the Secretary, may be necessary to achieve the purposes of this section.

(2)(A) ADDITIONAL DUTIES OF CORECT.—CORECT, through its member agencies, shall promote the development and application in lesser-developed countries of renewable energy resource technologies that—

- (i) promote the use of hybrid fossil-renewable energy systems;
- (ii) reduce dependence on unreliable sources of energy by encouraging the use of sustainable biomass, wind power, small-scale hydropower, solar, geothermal and other renewable energy resource technologies; and
- (iii) foster rural and urban energy development and energy self-sufficiency through the use of reliable and cost-effective renewable energy resource technologies.

(B) In addition, CORECT shall:

- (i) explore mechanisms for assisting domestic manufacturers, particularly small business manufacturers, of renewable energy resource technologies, to export their products and technologies;
- (ii) provide staffing to support the authority and responsibilities described in this section;
- (iii) provide technical and financial support for the establishment and sponsorship by United States' firms of training programs, workshops, and other educational programs on renewable energy technologies for representatives of lesser-developed countries and their firms; and
- (iv) augment budgets for the trade and development programs of the member agencies of the Council in order to support pre-feasibility or feasibility studies for projects that utilize renewable energy resource technologies.

(3)(A) ADDITIONAL DUTIES OF COEECT.—COEECT, through its member agencies, shall promote the development and application in lesser-developed countries of energy efficiency resource products and technologies that—

(i) reduce dependence on unreliable sources of energy by encouraging the use of energy efficiency resource products and technologies; and

(ii) foster rural and urban energy development and energy self-sufficiency through the use of reliable and economical energy efficiency resource products and technologies including services.

(B) In addition, COEECT shall:

(i) explore mechanisms for assisting domestic manufacturers, particularly small business manufacturers, of energy efficiency resource products and technologies, to export their products and services; and

(ii) provide staffing to support the authority and responsibilities described in this section.

(4) TRAINING AND ASSISTANCE.—In furthering the purposes of this section, CORECT and COEECT shall, through their member agencies—

(A) provide aggressive in-country technical training for local users and international development personnel;

(B) provide financial and technical assistance to nonprofit institutions that support the export and marketing efforts of domestic renewable energy and energy efficiency service companies, and develop environmentally responsible renewable energy and energy efficiency projects in developing nations;

(C) establish feasibility and loan guarantee programs to facilitate access to capital and credit;

(D) provide assistance and training materials to loan officers of the World Bank, international lending institutions, commercial and energy attaches at embassies of the United States, and such other personnel as the Council deems appropriate, in order to provide information about renewable energy and energy efficiency products and technologies to foreign governments or other potential project sponsors;

(E) support, through financial incentives, private sector efforts to commercialize and export renewable energy and energy efficiency resource technologies.

(5) OUTREACH.—CORECT and COEECT, through their member agencies, may establish renewable energy and energy efficiency industry outreach offices in the Pacific Rim and in the Caribbean Basin for the purpose of providing information concerning renewable energy and energy efficiency technologies and industries of the United States to territories, foreign governments, industries, and other entities.

* * * * *

[(g) For purposes of this section, the term "renewable energy" includes energy efficiency to the extent it is a part of a renewable energy system or technology.

[(h) There are authorized to be appropriated to the Secretary for activities of the interagency working group established under subsection (d) not to exceed—

[(1) \$3,000,000 for fiscal year 1991;

[(2) \$3,300,000 for fiscal year 1992; and

[(3) \$3,600,000 for fiscal year 1993.]]

(g)(1) Not later than June 1, 1992, and biennially thereafter, the Secretary, in consultation with member agencies, shall prepare and submit to Congress a report evaluating the range of energy efficiency and renewable energy resource technologies available to meet the energy needs and developing countries. This report also shall provide information on the specific energy and energy conservation needs of lesser-developed countries, an inventory of United States products and technologies available to meet those needs, and an update on the status of ongoing bilateral and multilateral technology assistance and renewable energy programs.

(2) The report should also include an evaluation of current renewable energy and energy efficiency resource technology export efforts, their success in meeting program objectives, and recommendations for future programs that:

(A) develop and promote sustainable use of indigenous renewable energy and energy efficiency resources and technologies in lesser-developed countries;

(B) given the credit and capital restrictions for meeting energy demands in the lesser-developed countries, focus on technologies that are both appropriate and cost-effective;

(C) assist lesser-developed countries in meeting their existing energy needs rather than creating new needs, in order to ensure immediate income-generating and timely use of the power generated;

(D) work with local individuals to assure that programs and projects meet specific national and local energy resource needs;

(E) use indigenous materials and associated hardware, wherever possible, in order to reduce costs and ensure project duplication;

(F) provide examples of cost-effective systems and applications for in-country non-governmental organizations and project technical personnel;

(G) provide mechanisms for assisting United States manufacturers, particularly smaller manufacturers, of energy-efficiency and renewable energy resource technologies, in exporting their goods and services;

(H) expand technical and administrative training programs, as well as distribution of multilingual technical training manuals and related materials; and

(I) examine the potential for using economic incentives, such as shared savings contracts, loan guarantees, and tax incentives, to promote technology transfer to lesser-developed countries.

(h) **AUTHORIZATIONS.**—(1) There is authorized to be appropriated to the Secretary for purposes of carrying out the programs under sections (d) and (e) \$10,000,000 for fiscal year 1992, including \$2,000,000 to carry out the purposes of subparagraph (d)(2), and such sums as may be necessary for fiscal year 1993 and 1994 to carry out the purposes of this subtitle except for subparagraph (d)(4).

(2) There is authorized to be appropriated to the Secretary for the purposes of subparagraph 256(d)(4), in addition to the amount specified in the previous sentence, \$2,750,000 for fiscal year 1992, and such sums as may be necessary for fiscal years 1993 and 1994.

TITLE III—IMPROVING ENERGY EFFICIENCY

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PART D—STATE ENERGY CONSERVATION PROGRAMS

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STATE ENERGY CONSERVATION PLANS

SEC. 362. (a) * * *

* * * * *

(d) Each proposed State energy conservation plan may include—

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(12) support for pre-feasibility and feasibility studies for projects that utilize renewable energy and energy efficiency resource technologies in order to facilitate access to capital and credit for such projects;

[(12)] *(13) in accordance with subsection (g), programs to implement the Energy Technology Commercialization Services Program; and*

[(13)] *(14) any other appropriate method or program to conserve and to promote efficiency in the use of energy.*

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TITLE III—IMPROVING ENERGY EFFICIENCY

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DEFINITIONS

SEC. 321. (a) For purposes of this part:

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(30) the term "total water use" means the quantity of water directly used by a showerhead, determined in accordance with test procedures under section 323.

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COVERAGE

SEC. 322. (a) IN GENERAL.—The following consumer products, excluding those consumer products designed solely for use in recreational vehicles and other mobile equipment, are covered products:

* * * * *

(14) Showerheads, except safety shower showerheads.

[(14)] *(15) Any other type of consumer product which the Secretary classifies as a covered product under subsection (b).*

* * * * *

TEST PROCEDURES

SEC. 323. (a) * * *

* * * * *

(b) AMENDED AND NEW PROCEDURES.—(1)(A) The Secretary may amend test procedures with respect to any covered product if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of paragraph (3).

* * * * *

(3) Any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, [or estimated annual operating cost] *estimated annual operating cost, or, in the case of shower-heads, total water use, in accordance with applicable American National Standards Institute (ANSI) flow rate standards of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct.*

* * * * *

LABELING

SEC. 324. (a) IN GENERAL.—(1) The Commission shall prescribe labeling rules under this section applicable to all covered products of each of the types specified in paragraphs (1), (2), (4), (6), and (8) through (12) of section 322(a), except to the extent that, with respect to any such type (or class thereof), the Commission determines under the second sentence of subsection (b)(5) that labeling in accordance with this section is not technologically or economically feasible.

(2)(A) The Commission shall prescribe labeling rules under this section applicable to all covered products of each of the types specified in paragraphs (3), (5) and (7) of section 322(a), except to the extent that with respect to any such type (or class thereof), the Commission determines under the second sentence of subsection (b)(5) that labeling in accordance with this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions.

(B) The Commission shall prescribe labeling rules under this section applicable to the covered product specified in paragraph (13) of section 322(a) and to which standards are applicable under section 325. Such rules shall provide that the labeling of any fluorescent lamp ballast manufactured on or after January 1, 1990, will indicate conspicuously, in a manner prescribed by the Commission under subsection (b) by July 1, 1989, a capital letter "E" printed within a circle on the ballast and on the packaging of the ballast or of the luminaire into which the ballast has been incorporated.

(C) *The Commission shall prescribe labeling rules under this section applicable to the covered product specified in paragraph (14) of section 322(a), requiring that a label state whether the product meets the standards under section 325(i), in accordance with American National Standards Institute (ANSI) marking and labeling requirements.*

(3) The Commission may prescribe a labeling rule under this section applicable to covered products of a type specified in [paragraph (14)] *paragraph (15)* of section 322(a) (or a class thereof) if—

* * * * *

(b) **RULES IN EFFECT NEW RULES.**—(1)(A) Any labeling rule in effect on the date of the enactment of the National Appliance Energy Conservation Act of 1987 shall remain in effect until amended, by rule, by the Commission.

(B) After the date of the enactment of the National Appliance Energy Conservation Act of 1987 and not later than 30 days after the date on which a proposed test procedure applicable to a covered product of any of the types specified in paragraphs (1) through [(14)] (15) of section 322(a) (or class thereof) is prescribed under section 323(b), the Commission shall publish a proposed labeling rule applicable to such type (or class thereof).

* * * * *

(3) Not earlier than 45 days nor later than 60 days after the date on which test procedures are prescribed under section 323(b) with respect to covered products of any type (or class thereof) specified in paragraphs (1) through (12) of section 322(a), the Commission shall prescribe labeling rules with respect to covered products of such type (or class thereof). Not earlier than 45 days after the date on which test procedures are prescribed under section 323(b) with respect to covered products of a type specified in [paragraph (14)] paragraph (15) of section 322(a), the Commission may prescribe labeling rules with respect to covered products of such type (or class thereof).

* * * * *

(5) The Commission may delay the publication of a proposed labeling rule, or the prescription of a labeling rule, beyond the dates specified in paragraph (1) or (3), if it determines that it cannot publish proposed labeling rules or prescribe labeling rules which meet the requirements of this section on or prior to the date specified in the applicable paragraph and publishes such determination in the Federal Register, together with the reasons therefor. In any such case, it shall publish proposed labeling rules or prescribe labeling rules for covered products of such type (or class thereof) as soon as practicable unless it determines (A) that labeling in accordance with this section is not economically or technically feasible, or (B) in the case of a type specified in paragraphs (3), (5), and (7) of section 322(a), that labeling in accordance with this section is not likely to assist consumers in purchasing decisions. Any such determination shall be published in the Federal Register, together with the reasons therefor. This paragraph shall not apply to the prescription of a labeling rule with respect to covered products of a type specified in [paragraph (14)] paragraph (15) of section 322(a).

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ENERGY CONSERVATION STANDARDS

SEC. 325. (a) **PURPOSES.**—The purposes of this section are to—

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(i) **STANDARDS FOR SHOWERHEADS.**—(1) For a showerhead manufactured on or after July 1, 1992, the standard shall be one that ensures the maintenance of public health and safety, allowing a maximum rate of water use of—

(A) 2.5 gallons per minute, when measured at a flowing water pressure of 80 pounds per square inch; or

(B) if before March 1, 1992, the American National Standards Institute (ANSI) publishes an amended standard for showerheads prescribing a maximum rate of water use that is less than the rate prescribed by the ANSI standard in effect on the date of enactment of this Act, the rate prescribed in the amended standard becomes effective.

(2)(A) If, after July 1, 1992, the American National Standards Institute publishes an amended standard different from that in effect pursuant to paragraph (1), the Secretary, not later than 180 days after publication of the amended standard, shall publish a notice of the amended standard, and, subject to subparagraph (B), the amended standard shall be in effect for showerheads manufactured on or after the date that is 90 days after the date of the notice.

(B) The Secretary may not prescribe an amended standard that increases the maximum rate of water use of showerheads over the rate allowed by the standard established under paragraph (1), unless the Secretary determines that it is in the interest of public health and safety.

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[(i)] (j) STANDARDS FOR OTHER COVERED PRODUCTS. * * *

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[(j)] (k) FURTHER RULEMAKING. * * *

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[(k)] (l) PETITION FOR AN AMENDED STANDARD. * * *

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[(l)] (m) CRITERIA FOR PRESCRIBING NEW OR AMENDED STANDARDS. * * *

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[(m)] (n) PROCEDURE FOR PRESCRIBING NEW OR AMENDED STANDARDS. * * *

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[(n)] (o) SPECIAL RULE FOR CERTAIN TYPES OR CLASSES OF PRODUCTS. * * *

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[(o)] (p) INCLUSION IN STANDARDS OF TEST PROCEDURES AND OTHER REQUIREMENTS. * * *

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[(p)] (q) DETERMINATION OF COMPLIANCE WITH STANDARDS. * * *

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[(q)] (r) SMALL MANUFACTURER EXEMPTION. * * *

EFFECT ON OTHER LAW

SEC. 327. (a) PREEMPTION OF TESTING AND LABELING REQUIREMENTS.—(1) Effective on the date of this enactment of the National

Appliance Energy Conservation Act of 1987, this part supersedes any State regulation insofar as such State regulation provides at any time for the disclosure of information with respect to any measure of energy consumption of any covered product if—

* * * * *

(c) **GENERAL RULE OF PREEMPTION FOR ENERGY CONSERVATION STANDARDS WHEN FEDERAL STANDARD BECOMES EFFECTIVE FOR A PRODUCT.**—Except as provided in section 325(b)(3)(A)(ii) and effective on the effective date of an energy conservation standard established in or prescribed under section 325 for any covered product, no State regulation concerning the energy efficiency [or energy use of such covered product] *energy use or total water use of the covered product* shall be effective with respect to such product unless the regulation—

(1) is a regulation described in paragraph (2) or (4) of subsection (b), except that a State regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which paragraph (5) of section 325(g) is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary under paragraph (7) of such section and is applicable to such ballasts;

(2) is a regulation which has been granted a waiver under subsection (d); [or]

(3) is in a building code for new construction described in subsection (f)(3)[.]; or

(4) is a State, regional, or local regulation that establishes flow rate requirements for showerheads that was prescribed or enacted before June 15, 1991.

* * * * *

(h) **Labeling of Showerheads.**—No State, regional, or local regulation concerning the labeling of showerheads shall be effective on or after the date that the Commission prescribes a label for showerheads pursuant to section 324(a)(2)(C).

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PART C—CERTAIN INDUSTRIAL EQUIPMENT

DEFINITIONS

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SEC. 344A—(a) DEFINITIONS.—For the purposes of this Section:

(1) the term “lamp” means incandescent, fluorescent and high intensity discharge lamps;

(2) the term “small commercial package air conditioning and heating equipment” means air-cooled, and electrically operated unitary central air conditioners and central air conditioning heat pumps for commercial application which are rated below 135,000 Btu per hour (cooling capacity); and

(3) the term “large commercial package air conditioning and heating equipment” means air-cooled, and electrically operated unitary central air conditioners and central air conditioning heat pumps for commercial application which are rated at or

above 135,000 Btu per hour and below 240,000 Btu per hour (cooling capacity)."

(4) the term "energy conservation standard" means—

(A) a performance standard that prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a product; or

(B) a design requirement for a product.

(b) **INITIAL DETERMINATIONS.**—The Secretary shall, within 12 months after the date of the enactment of this Act, determine, with respect to: lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment; and utility distribution transformers; whether—

(1) it is practicable to classify such products into types and to prescribe test procedures to measure energy use, energy efficiency, or estimated annual operating cost during a representative average use cycle or period of use which are not unduly burdensome to conduct; and

(2) it is likely that energy efficiency standards would result in significant energy savings, without a reduction in performance, for those products which the Secretary has determined under paragraph (1) that it is practicable to classify and prescribe test procedures.

(c) **TEST PROCEDURES.**—The Secretary shall, within 18 months after the date of the enactment of the National Energy Security Act of 1991, prescribe test procedures for those lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and utility distribution transformers for which he has determined under subsection (b) that classification into types and testing procedures are practicable and that it is likely that energy efficiency standards would result in significant energy savings, without a reduction in performance. In establishing these test procedures, the Secretary shall use existing and generally accepted industry testing procedures when practicable and consistent with the objective of increasing energy efficiency to the extent technically feasible and economically justified. For small commercial package air conditioning and heating equipment and large commercial package air conditioning and heating equipment for which the Secretary establishes test procedures pursuant to this section, such test procedures shall be consistent with those generally accepted industry testing procedures or rating procedures, if any, developed by the Air Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air Conditioning Engineers as in effect on the date of the enactment of the National Energy Security Act of 1991. If such an industry test procedure or rating procedure for such small commercial package air conditioning and heating equipment or large commercial package air conditioning and heating equipment is subsequently amended the Secretary shall amend the test procedure for the product as necessary to be consistent with the amended industry test procedure or rating procedure unless she determines by rule published in the Federal Register, supported by clear and convincing evidence, that to do so would not meet the purposes and criteria of this section with respect to the product. If the Secretary issues a rule containing such a determination the rule may establish an amended test proce-

ture for such product that meets the purposes and criteria of this section with respect to that product.

(d) **CLASSIFICATION AND STANDARDS.**—(1) The Secretary, for those products for which test procedures have been prescribed under subsection (c), shall, within 18 months thereafter:

(A) determine types (or classes) for lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and utility distribution transformers; and

(B) develop energy conservation standards for each type (or class) of lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and utility distribution transformers for which such standards would be technologically feasible and economically justified. Except as provided in subsections (d)(3)(B) and (d)(3)(C) of this section, such standards shall become effective no less than 18 months and no more than 3 years after development of such standards.

(2) In establishing these standards, the Secretary shall take into consideration the criteria contained in sections 325(1) and (m) of the Energy Policy and Conservation Act.

(3)(A) In establishing these standards, the Secretary shall first review existing and generally accepted industry voluntary energy efficiency standards for these products, if any, to determine whether the adoption of industry standards would be consistent with the objective of increasing energy efficiency to the extent technically feasible and economically justified. In which case, the Secretary shall adopt such industry standards.

(B) For small package air conditioning and heating equipment for which the Secretary establishes standards pursuant to this section, the Secretary shall establish such standards at the standard levels set forth for such products in ASHRAE/IES Standard 90.1 as in effect on the date of enactment of this Act. Such standards shall become effective for such products manufactured on or after January 1, 1994. Such standards levels shall be as follows:

(i) The minimum seasonal energy efficiency ratio of three-phase electric central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 10.0 for products manufactured on or after January 1, 1994.

(ii) The minimum seasonal energy efficiency ratio of three-phase electric central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 9.7 for products manufactured on or after January 1, 1994.

(iii) The minimum energy efficiency ratio of central air conditioners and central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 8.9 (at a standard rating of 95 degrees Fahrenheit, dry bulb (F db)) for products manufactured on or after January 1, 1994.

(iv) The minimum heating seasonal performance factor of three-phase electric central air conditioning heat pumps less

than 65,000 Btu per hour (cooling capacity), split systems, shall be 6.8 for products manufactured on or after January 1, 1994.

(v) The minimum heating seasonal performance factor of three-phase electric central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 6.6 for products manufactured on or after January 1, 1994.

(vi) The minimum coefficient of performance in the heating mode of central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 3.0 (at a high temperature rating of 47 degrees F db) for products manufactured on or after January 1, 1994.

(C) For large package air conditioning and heating equipment for which the Secretary establishes standards pursuant to this section, the Secretary shall establish such standards at the standard levels set forth for such products in ASHRAE/IES Standard 90.1 as in effect on the date of enactment of this Act. Such standards shall become effective for such products manufactured on or after January 1, 1995. such standard levels shall be as follows:

(i) The minimum energy efficiency ratio of central air conditioners and central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 8.5 (at a standard rating of 95 degrees F db) for products manufactured on or after January 1, 1995.

(ii) The minimum coefficient of performance in the heating mode of central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 2.9 for products manufactured on or after January 1, 1995.

(D) If ASHRAE/IES Standard 90.1 as in effect on the date of enactment of this Act is subsequently amended with respect to any small commercial package air conditioning and heating equipment or large commercial package air conditioning and heating equipment for which the Secretary establishes standards pursuant to this section, the Secretary shall amend the standard for that product to the level in the amended ASHRAE/IES Standard 90.1 unless he determines by rule published in the Federal Register, supported by clear and convincing evidence, that adoption of the level in the amended ASHRAE/IES Standard 90.1 would not meet the purposes and criteria of this section with respect to such product. If the Secretary issues a rule containing such a determination, the rule may establish an amended standard for such product that meets the purposes and criteria of this section with respect to that product. A standard as amended by the Secretary under this subsection shall become effective for products manufactured on or after a date which is four years after the effective date of the relevant standard in amended ASHRAE/IES Standard 90.1, except that an amended standard issued by the Secretary pursuant to a rule under this subsection (d)(3)(C) shall become effective for products manufactured on or after a date which is four years after the date the rule is published in the Federal Register.

(4) These standards shall, upon their effective date, preempt any state or local regulation concerning the energy efficiency or energy use of such products.

(5) Except as provided in subparagraphs (d)(3) (B) through (D), the Secretary shall periodically, but at least every five years, review and update any standards established pursuant to this section, and shall reevaluate whether standards are justified for those products for which standards were not adopted.

(e) LABELING.—(1) The Federal Trade Commission shall, within twelve months after the date on which a test procedure is prescribed by the Secretary for a product (or class thereof) under subsection (c), prescribe a labeling rule for the product (or class thereof), except to the extent that, with respect to a product (or class thereof) the Commission determines that a labeling rule is not economically or technically feasible, would not result in significant energy savings and is not necessary for informational purposes.

(2) If the commission determines that labeling is not necessary under paragraph (1) and the Secretary prescribes standards under subsection (d), then the Commission, within twelve months after the date on which a standard is prescribed by the Secretary, shall prescribe a labeling rule designed solely to facilitate enforcement of the requirements of this section and other applicable provisions of law. A labeling rule for small commercial package air conditioning and heating equipment and large commercial package air conditioning and heating equipment shall be designed solely to facilitate enforcement of the regulations of this section and other applicable provisions of law.

(f) REQUIREMENT OF MANUFACTURERS.—For the purpose of requirements of this Act, manufacturers and private labelers are subject to the requirements of Section 326 of the Energy Policy and Conservation Act (42 U.S.C. 6296).

(g) ENFORCEMENT.—After the date on which a manufacturer must provide a label for a product pursuant to subsection (e)—

(1) each product shall be considered, for purposes of paragraphs (1) and (2) of section 332(a) of the Energy Policy and Conservation Act, a new covered product to which a rule under section 324 of the Energy Policy and Conservation Act applies; and

(2) it shall be unlawful for any manufacturer or private labeler to distribute in commerce any new product manufactured after this date which is not in conformity with the applicable energy conservation standard prescribed for the product (or class thereof) under subsection (d). For purposes of section 333 of the Energy Policy and Conservation Act, this paragraph shall be considered to be a part of section 332 of the Energy Policy and Conservation Act.

(h) ENERGY EFFICIENCY LABELING FOR COMMERCIAL OFFICE EQUIPMENT.—

(1) DEVELOPMENT OF PROGRAM.—Not later than one year after the date of enactment of the National Energy Security Act of 1991, and after consulting with appropriate industry representatives, the Secretary shall provide financial and technical assistance to support the voluntary development of a national energy efficiency rating and labeling program including any necessary

test procedures for commercial office equipment that is widely used and for which there is a potential for significant energy savings. The program shall set forth information and specifications that will enable purchasers of office equipment to make informed decisions about the energy efficiency and costs of alternative commercial office equipment.

(2) **SECRETARIAL ACTION.**—If a national energy efficiency rating and labeling program consistent with the objectives of paragraph (1) is not voluntarily established within two years of the date of enactment of this Act, then the Secretary shall, after consulting with the National Institute of Standards and Technology, prescribe, within one year, test procedures for such commercial office equipment under section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293).

(3) **FEDERAL TRADE COMMISSION RULES.**—The Federal Trade Commission (hereinafter in this section, the "Commission") shall prescribe labeling rules under section 324 of the Energy Policy and Conservation Act (42 U.S.C. 6294) for commercial office equipment, except to the extent that the Commission determines that labeling in accordance with subsection (b) of this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions with respect to commercial office equipment (or class thereof).

(4) **COVERED PRODUCTS.**—For purposes of sections 323 and 324 of the Energy Policy and Conservation Act, commercial office equipment shall be considered covered products under section 322 of such Act (42 U.S.C. 6292) unless excluded by the Commission pursuant to subsection (c).

(5) **AUTHORIZATION.**—There is authorized to be appropriated to the Secretary such sums as are necessary to carry out the purposes of this section.

(i) **STUDY OF UTILITY DISTRIBUTION TRANSFORMERS.**—

(1) Not later than 18 months after the date of the enactment of the National Energy Security Act of 1991, the Secretary shall evaluate the practicability and cost-effectiveness and potential energy savings of replacing or upgrading existing utility distribution transformers during routine maintenance.

(2) The Secretary shall report the findings of his evaluation to Congress with recommendations on how such energy savings, if any, could be achieved.

* * * * *

PART D—STATE ENERGY CONSERVATION PLANS

* * * * *

STATE ENERGY CONSERVATION PLANS

SEC. 362. * * *

* * * * *

(c) Each proposed State energy conservation plan to be eligible for Federal assistance under this part shall include—

(1) mandatory lighting efficiency standards for public buildings (except public buildings owned or leased by the United States);

(2) programs to promote the availability and use of carpools, vanpools, and public transportation (except that no Federal funds provided under this part shall be used for subsidizing fares for public transportation);

(3) mandatory standards and policies relating to energy efficiency to govern the procurement practices of such State and its political subdivisions;

(4) mandatory thermal efficiency standards and insulation requirements for new and renovated buildings (except buildings owned or leased by the United States);

(5) a traffic law or regulation which, to the maximum extent practicable be consistent with safety, permits the operator of a motor vehicle to turn such vehicle right at a red stop light after stopping [;and] and to turn such vehicle left from a one-way street onto a one-way street at a red stop light after stopping; and

(d) Each proposed State energy conservation plan may include—

* * * * *

(15) programs to provide training and education to building designers and contractors involved in building design or in the sale, installation and maintenance of energy systems and equipment. Such programs shall (A) enlist appropriate trade and professional organizations in the development, administration and financing of this program; and (B) also include training workshops, practice manuals, and testing for each area of energy efficiency technology. Designers and contractors who have successfully completed a training course operated pursuant to this section shall be presented a certificate of completion at the end of such course.

* * * * *

FEDERAL ASSISTANCE TO STATES

SEC. 363. * * *

* * * * *

(f) If the Secretary determines that a State has demonstrated a commitment to improving the energy efficiency of buildings within the State, then beginning in fiscal year 1993, the Secretary may allocate funds appropriated pursuant to Section 365(f)(2) to provide up to \$1,000,000 to such State for deposit into a state revolving fund designed to finance energy efficiency improvements in State and local government buildings in such State. In making this determination the Secretary shall consider whether:

(1) such State, or a majority of the units of local government with jurisdiction over building energy codes within such State, have adopted building codes at least as stringent as the industry voluntary building energy code as defined under Title III of the Energy Conservation and Production Act (42 U.S.C. 6835);

(2) such state has a program to finance energy efficiency improvement projects in State and local government facilities and

buildings that includes a revolving fund to finance such projects; and

(3) such State has raised funding from non-federal sources, including but not limited to, oil overcharge funds, State or local government appropriations, or utility contributions, sufficient to provide at least 75 percent of the total funds provided for deposit into such revolving fund.

(f) Energy Education Grants. (1) the Secretary shall provide competitive grants to supplement state program activities conducted pursuant to section 362(d)(4) to support projects designed to increase public awareness and understanding of energy issues, or to train educators to use existing energy related information for teaching purposes. The Federal contribution toward such projects may not exceed 75 percent of their total cost.

(2) There are authorized to be appropriated such sums as may be necessary to implement the provisions of this section.

GENERAL PROVISIONS

SEC. 365. (a) The Secretary may prescribe such rules as may be necessary or appropriate to carry out his authority under this part.

(f)(1) For the purpose of carrying out this part, there are authorized to be appropriated not to exceed \$25,000,000 for fiscal year 1991, \$35,000,000 for fiscal year 1992, and \$45,000,000 for fiscal year 1993.

(2) In addition to the amounts authorized to be appropriated under paragraph (1), there are authorized to be appropriated such sums as may be necessary, to remain available until expended, to carry out the purposes of section 363(f).

FEDERAL ACTIONS WITH RESPECT TO RECYCLED OIL

SEC. 383. (a) * * *

(c) Test procedures for determining substantial equivalency of recycled oil and new oil.

[As soon as practicable after the date of enactment of this Act] Not less than 15 months after the date of enactment of the National Energy Security Act of 1991, the [National Bureau of Standards] National Institute of Standards and Technology shall develop test procedures for the determination of substantial equivalency of re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives, with new oil for a particular end use. As soon as practicable after development of such test procedures, the [National Bureau of Standards] National Institute of Standards and Technology shall report such procedures to the Commission.

(g) MARKET INCENTIVES FOR THE REUSE OF USED OIL.—

(1) REQUIREMENTS.—(A) Beginning not later than 18 months after the date of the enactment of the National Energy Security Act of 1991, a producer or importer of 100,000 gallons or more per year of lubricating oil shall each year either refine, rerefine, or reprocess into petroleum products, including fuels, using a method described in subparagraph (B), an amount of used oil equal to at least that amount of oil determined by—

(i) multiplying the lubricating oil produced or imported that year by such person, by

(ii) the percentage established by the Secretary under paragraph (2).

(B) A producer or importer of lubricating oil may comply with this paragraph by—

(i) refining, re-refining, or reprocessing used oil for purposes of producing petroleum products, including fuels; or

(ii) purchasing credits under the credit system established pursuant to paragraph (3).

(2) **ESTABLISHMENT OF REUSE PERCENTAGE.**—The Secretary shall establish, on an annual basis, a percentage for use under paragraph (1). The percentage applicable during the first year that the requirement established by paragraph (1) is in effect, shall be a percentage that is equal to the reuse rate for lubricating oil that exists on the date of the enactment of the National Energy Security Act of 1991. Such rate shall be determined by using data for the most recent year for which data are available. Through the year 2000, the percentage shall be an additional two percentage points higher than the actual percentage for the previous year as determined by the Secretary.

(3) **REGULATIONS.**—“(A) **IN GENERAL.** Not later than 18 months after the date of the enactment of the National Energy Security Act of 1991, the Secretary shall promulgate regulations to implement these requirements. These regulations shall cover:

(i) producers or importers of lubricating oil;

(ii) generators or collectors of used oil;

(iii) a system, including permits, by which refiners, re-refiners and reprocessors of used oil may create credits which may be purchased by producers and importers of lubricating oil for the purpose of complying with subparagraph (1)(B);

(iv) enforcement;

(v) record-keeping;

(vi) any other requirement which the Secretary considers necessary for administering the program set forth by this subsection; and

(vii) prohibitions on the mixing of used oil with hazardous wastes or other physical or chemical impurities not associated with its use as a lubricating oil, and the creation of credits from such mixed used oil.

(B) **EXEMPTIONS.**

(i) This subsection shall not apply to a facility:

(I) that is classified as an S.I.C. number 2911 facility under the Office of Management and Budget Standard Classification Manual and that refines used oil into fuel or other petroleum products, the amount of which is equal to no more than the amount of used oil that the owner of the facility is required to refine or otherwise reuse under paragraph (1)(A).

(II) that is classified as an S.I.C. number 2899, or S.I.C. number 2992 facility under the Office of Management and Budget Standard Classification Manual and that compounds or blends lubricating base oil into fin-

ished lubricant products as its principal activity, provided that such facility has a contract to reprocess a customer's used lubricant, and does not take title to such lubricant, and such reprocessed lubricant product is returned to the customer.

(ii) This subsection shall not apply to used oil that is generated on-site for on-site energy production activities, including storage, use, and transportation, carried out at a facility that is classified as an S.I.C. number 4911 facility under the Office of Management and Budget Standard Classification Manual.

(iii) The Secretary shall promulgate regulations establishing requirements for exempt refineries that refine used oil. The regulations shall cover record-keeping, testing, and such other matters as the Secretary determines are necessary and appropriate for refining used oil at exempt refineries.

(4) **DEFINITIONS.**—For purposes of this subsection, the term:

(A) "credit" means a legal record of used oil refined, re-refined or reprocessed in accordance with this subsection for purposes of complying with paragraph (1);

(B) "producer" with respect to lubricating oil means any person who produces a lubricant base stock from crude oil. Such production does not include the re-refining of used oil;

(C) "importer" with respect to lubricating oil means any person who imports a lubricant base stock or lubricating oil, except for lubricating oil contained in transportation vehicles or other machinery;

(D) "lubricant base stock" means oil from which lubricating oil is made after introduction of additives;

(E) "generator" and "collector" mean any person who collects, stores, accumulates, or otherwise generates used oil. Such terms do not include an individual who generates used oil by removing such oil from the engine of a light duty motor vehicle or household appliance owned by that individual;

(F) "re-refiner" and "reprocessor" mean any person who produces lubricating oils, fuels, or other petroleum products through the processing of used oil; and

(G) "refiner" means any owner or operator of a facility that is classified as an S.I.C. 2911 facility under the Office of Management and Budget Standard Classification Manual.

(5) **AUTHORIZATIONS.**—(a) There is authorized to be appropriated to the Secretary of Energy \$2,000,000 to carry out this subsection.

(b) There is authorized to be appropriated to the Secretary of Commerce for use by the National Institute of Standards and Technology \$3,000,000 to carry out its responsibilities under this section.

(6) **REPORT.**—One year after the date of enactment of this subsection, and annually thereafter, the Secretary shall submit a report to the House of Representatives and the Committee on

Energy and Natural Resources of the Senate on the implementation and operation of this subsection.

* * * * *

ENERGY CONSERVATION AND PRODUCTION ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Energy Conservation and Production Act".

TITLE I—FEDERAL ENERGY ADMINISTRATION ACT AMENDMENTS AND RELATED MATTERS

CONTENTS

* * * * *

TITLE III—ENERGY CONSERVATION STANDARDS FOR NEW BUILDINGS

Sec. 301. Short title.

Sec. 302. Findings and purposes.

Sec. 303. Definitions.

[Sec. 304. Promulgation of energy conservation performance standards for new buildings.

[Sec. 306. Federal buildings.

[Sec. 308. Technical assistance.

[Sec. 309. Consultation with interested and affected groups.

[Sec. 310. Support activities.

[Sec. 311. Monitoring of State and local adoption of energy conservation standards for buildings.]

Sec. 304. Federal building energy code.

Sec. 305. Federal compliance.

Sec. 306. Support for industry voluntary building energy code.

Sec. 307. Adoption incentives.

Sec. 308. Technical Assistance.

Sec. 309. Reports.

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TITLE III—ENERGY CONSERVATION STANDARDS FOR NEW BUILDINGS

* * * * *

DEFINITIONS

SEC. 303. As used in this title:

* * * * *

[(9) The term "voluntary performance standards" means an energy consumption goal or goals to be met without specification of the methods, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary.]

[(10)] (9) The term "residential building" means any structure which is constructed and developed for residential occupancy.

[(11)] (10) The term "Secretary" means the Secretary of Energy.

[(12)] (11) The term "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory and possession of the United States.

[(13)] (12) The term "unit of general purpose local government" means any city, country, town, municipality, or other political subdivision of a State (or any combination thereof), which has a building code or similar authority over a particular geographic area.

(13) The term "Federal building energy code" means an energy consumption goal to be met without specification of the methods, materials, or equipment to be employed in achieving that goal, but including statements of the requirements, criteria, and evaluation methods to be used, and any necessary commentary.

(14) The term "industry voluntary building energy code" means a building energy code developed and updated through an industry process, such as that used by the Council of American Building Officials; the American Society of Heating, Refrigerating, and Air-conditioning Engineers; or other appropriate industry organizations.

**[PROMULGATION OF ENERGY CONSERVATION VOLUNTARY
PERFORMANCE STANDARDS FOR NEW BUILDINGS]**

[SEC. 304. (a)(1)] As soon as practicable, but in no event later than 3 years after the date of enactment of this title, the Secretary, only after consultation with the Administrator, the Secretary of Commerce utilizing the services of the Director of the National Bureau of Standards, and the Administrator of the General Services Administration, shall develop and publish in the Federal Register for public comment proposed voluntary performance standards for new commercial buildings. Interim voluntary performance standards for new commercial buildings shall be promulgated by August 1, 1981, and, for at least the 12-month period beginning on such date, the Secretary of Energy shall conduct a demonstration project utilizing such standards in at least two geographical areas in different climatic regions of the country. Prior to April 1, 1984, and not later than 180 days after completing such demonstration project, such Secretary shall transmit to both Houses of the Congress a report containing an analysis of the findings and conclusions made as a result of carrying out such project, including at least an analysis of the effect such standards would have on the design, construction costs, and the estimated total energy savings (including the types of energy) to be realized from utilizing such energy standards in commercial buildings. Final voluntary performance standards shall be promulgated by April 1, 1983.

[(2)] As soon as practicable, but in no event later than 3 years after the date of enactment of this title, the Secretary, only after consultation with the Administrator and the Secretary of Commerce utilizing the services of the Director of the National Bureau of Standards shall develop and publish in the Federal Register for public comment proposed performance standards for new residential buildings. Interim voluntary performance standards for new residential buildings shall be promulgated by August 1, 1981, and, for at least the 12-month period beginning on such date, the Secretary of Energy shall conduct a demonstration project utilizing such standards in at least two geographical areas in different regions of the country. Prior to April 1, 1984 and not later than 180 days after completing such demonstration project, such Secretary shall transmit to both Houses and Congress a report containing an anal-

ysis of the findings and conclusions made as a result of carrying out such project, including at least (A) an analysis of the impact of such standards on builders (especially on small builders) and on the cost of constructing such buildings and the impact of such cost on the ability of low- and moderate-income persons to purchase or rent such buildings, and (B) an analysis of the estimated total energy savings (including the types of energy) to be realized from utilizing such standards in residential buildings. Final voluntary performance standards for such buildings shall be promulgated by April 1, 1983.

[(3) In the development of voluntary performance standards, the Secretary shall utilize the services of the National Institute of Building Sciences, under appropriate contractual arrangements.

[(4) Except in the case of Federal buildings as required under section 306, voluntary performance standards under this subsection shall be developed solely as guidelines for the purpose of providing technical assistance for the design and construction of energy efficient buildings.

[(b) All voluntary performance standards promulgated pursuant to subsection (a) shall take account of, and make such allowance or particular exception as the Secretary determines appropriate for, climatic variations among the different regions of the country.

[(c) The Secretary, in consultation with the Administrator, the Secretary of Housing and Urban Development, the Secretary of Commerce, the Administrator of the General Services Administration, and the heads of other appropriate Federal agencies, and the National Institute of Building Sciences, shall periodically review and provide for the updating of voluntary performance standards promulgated pursuant to subsection (a).

[(d) The Secretary, if he finds that the dates otherwise specified in this section for publication of proposed, or for promulgation of final, voluntary performance standards under subsection (a)(1) or (a)(2) cannot practicably be met, may extend the time for such publication or promulgation, but no such extension shall result in a delay of more than 6 months in promulgation.

[FEDERAL BUILDINGS

[SEC. 306. The head of each Federal agency responsible for the construction of any Federal building shall adopt such procedures as may be necessary to assure that any such construction meets or exceeds the applicable interim performance standards promulgated pursuant to section 304(a). Not later than April 1, 1984, the head of each such agency shall adopt such procedures as may be necessary to assure that construction of any Federal building meets or exceeds the applicable final performance standards.

[TECHNICAL ASSISTANCE

[SEC. 308. The Secretary (directly, by contract, or otherwise) may provide technical assistance to States and units of general purpose local government to assist them in furthering the design and construction of energy efficient buildings.

【CONSULTATION WITH INTERESTED AND AFFECTED GROUPS

【SEC. 309. In developing and promulgating voluntary performance standards and carrying out other functions under this title, the Secretary shall consult with appropriate representatives of the building community (including representatives of labor and the construction industry, engineers, and architects), with appropriate public officials and organizations of public officials, and with representatives of consumer groups. For purposes of such consultation, the Secretary shall, to the extent practicable, make use of the National Institute of Building Sciences. The Secretary may also establish one or more advisory committees as may be appropriate. Any advisory committee or committees established pursuant to this section shall be subject to the provisions of the Federal Advisory Committee Act.

【SUPPORT ACTIVITIES

【SEC. 310. the Secretary in cooperation with the Administrator, Secretary of Housing and Urban Development, the Secretary of Commerce utilizing the services of the Director of the National Bureau of Standards, and the heads of other appropriate Federal agencies, and the National Institute of Building Sciences, shall carry out any activities which the Secretary determines may be necessary or appropriate to assist in the development of voluntary performance standards under section 304(a) and to facilitate the implementation of such standards by State and local governments. Such activities shall be designed to assure that such standards are adequately analyzed in terms of energy efficiency, stimulation of use of nondepletable sources of energy, institutional resources, habitability, economic cost and benefit, and impact upon affected groups.

【MONITORING OF STATE AND LOCAL ADOPTION OF ENERGY CONSERVATION STANDARDS FOR BUILDINGS

【SEC. 311. The Secretary, with the advice and assistance of the National Institute of Building Sciences, shall—

【(1) monitor the progress made by the States and their political subdivisions in adopting and enforcing energy conservation standards for new buildings;

【(2) identify any procedural obstacles or technical constraints inhibiting implementation of such standards;

【(3) evaluate the effectiveness of such prevailing standards; and

【(4) within 12 months after the date of enactment of this title, and semiannually thereafter, report to the Congress on (A) the progress of the States and units of general purpose local government in adopting and implementing energy conservation standards for new buildings, and (B) the effectiveness of such standards.】

FEDERAL BUILDING ENERGY CODE

SEC. 304. (a) Within two years of enactment of the National Energy Security Act of 1991, the Secretary, after consulting with ap-

appropriate Federal agencies; the Council of American Building Officials; the American Society of Heating, Refrigerating, and Air-conditioning Engineers; the National Association of Home Builders; the Illuminating Engineering Society; the American Institute of Architects; and the National Conference of States on Building Codes and Standards, shall issue by rule a Federal building energy code that assures the inclusion in Federal buildings of all energy efficiency measures that are technologically feasible and economically justified. This code shall become effective no earlier than six months and no later than two years after issued.

(b) The Federal building energy code shall—

(1) contain energy saving and renewable energy specifications that meet or exceed the energy saving and renewable energy specifications of the industry voluntary building energy code, and

(2) include a method of compliance that uses the same format as that used by the industry voluntary building energy code.

(c) The Secretary shall identify and describe the basis for any substantive difference between the Federal building energy code and the industry voluntary building energy code.

(d) Interim energy performance standards for new Federal residential and commercial buildings issued by the Secretary under this title as it existed before enactment of the National Energy Security Act of 1991 shall remain in effect until the head of a Federal agency required to adopt procedures under section 305(a) adopts those procedures.

FEDERAL COMPLIANCE

SEC. 305. (a) The head of each Federal agency shall adopt procedures necessary to assure that new Federal residential or commercial buildings meet or exceed the Federal building energy code.

(b) The head of a Federal agency may expend Federal funds for the construction of a new Federal building only if the building meets or exceeds the Federal building energy code.

(c) The head of each Federal agency that guarantees a mortgage for constructing a new building shall adopt the procedures necessary to assure that the building meets or exceeds the Federal building energy code.

SUPPORT FOR INDUSTRY VOLUNTARY BUILDING ENERGY CODE

SEC. 306. (a) Within one year of the enactment of the National Energy Security Act of 1991, the Secretary, after consulting with appropriate Federal agencies; the Council of American Building Officials; the American Society of Heating, Refrigerating, and Air-conditioning Engineers; the National Conference of States on Building Codes and Standards; and any other appropriate building codes and standards organization, shall support the upgrading of an industry voluntary building energy code for new residential and commercial buildings. The support shall include—

(1) a compilation of data and other information regarding building energy efficiency codes in the possession of the Federal Government, State and local governments, and industry organizations;

(2) assistance in improving the technical basis for the energy code;

(3) assistance in determining the cost-effectiveness and the technical feasibility of the energy efficiency measures included in the code; and

(4) development of interim energy performance standards for new non-Federal residential buildings.

(b) The Secretary, in consultation with the appropriate Federal agencies, shall periodically review the technical and economic basis of the industry voluntary building energy code. Based upon ongoing research activities and a review of appropriate industry energy standards, the Secretary shall—

(1) recommend amendments to the industry voluntary building energy code,

(2) seek adoption of all technically feasible and economically justified energy efficiency measures, and

(3) participate otherwise in any industry process for review and modification of the industry voluntary building energy code.

ADOPTION INCENTIVES

SEC. 307. (a) STATE REPORT.—Within two years of the enactment of the National Energy Security Act of 1991, each state shall submit a report to the Secretary on the type and status of and compliance and enforcement procedures of building energy codes used within the State, including a list of the units of general purpose local government within the State that identifies which, if any, have adopted building energy codes.

(b) AVAILABILITY OF INCENTIVE FUNDING.—If the Secretary certifies that a State or any units of general purpose local government which have jurisdiction regarding energy building codes, has adopted building energy codes at least as stringent as those of the voluntary energy building codes, then the Secretary shall provide incentive funding to that State or such units of general purpose local government to fund activities to further promote the adoption and implementation of the voluntary energy building codes. Such incentive funds shall be allocated from funds made available under subsection (c), on the basis of the average number of residential housing starts within such State or unit of general purpose local government during the previous three years. The Secretary may use up to five percent of the funds made available under subsection (c) for administration of activities conducted pursuant to this section.

(c) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to provide incentive funding to the States pursuant to this section.

TECHNICAL ASSISTANCE

SEC. 308. The Secretary may provide technical assistance to States, units of general purpose local government, and other appropriate organizations to promote the adoption and implementation of the voluntary energy building codes or to otherwise promote the design and construction of energy efficient buildings.

REPORTS

SEC. 309. The Secretary, in consultation with the appropriate Federal agencies, shall report annually to Congress on activities conducted pursuant to this title including:

(1) the recommendations made regarding the prevailing industry voluntary building energy code under Section 304(c);

(2) a State-by-State summary of progress made in the adoption and implementation of the voluntary energy building codes or more stringent codes; and

(3) recommendations to Congress on opportunities to further promote energy efficiency and other purposes of this part.

TITLE IV—ENERGY CONSERVATION AND RENEWABLE-RESOURCE ASSISTANCE FOR EXISTING BUILDINGS

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PART A—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

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FINANCIAL ASSISTANCE

SEC. 414. * * *

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SEC. 414A. PRIVATE SECTOR INVESTMENTS.—

(a) IN GENERAL.—The Secretary shall provide financial assistance to recipients of Federal financial assistance or financial assistance from States pursuant to sections 413 and 414 of this title to pay for the costs of the development and the initial implementation of partnerships, agreements or other arrangements with utilities, private sector interests or other institutions, pursuant to which financial assistance would be made available to make energy conservation improvements in low income housing. Financial assistance provided by the Secretary under this section may be used for the negotiation of partnerships, agreements and other arrangements; the presentation of arguments before State or local agencies; expert advice on the development of partnerships, agreements and other arrangements; or other activities reasonably associated with the development and initial implementation of such arrangements.

(b) CONDITIONS.—Financial assistance provided under this section to institutions other than States shall, to the extent practicable, coincide with the timing of awards such institutions are receiving under sections 413 and 414 of this Act. No less than 80 percent of the funds awarded under this section shall be provided to entities other than states. Recipients of assistance under this section shall have up to three years to carry out projects undertaken with such assistance.

(c) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

Sec. 414B. TECHNICAL TRANSFER GRANTS.—

(a) IN GENERAL.—The Secretary may provide financial assistance to recipients of Federal financial assistance or financial assistance

from States pursuant to sections 413 and 414 of this Title for the purpose of: evaluating technical and management measures which increase program and/or private entity performance in weatherizing low income housing; producing technical information for use by persons involved in weatherizing low income housing; exchanging information; and conducting training programs for persons involved in weatherizing low income housing. No less than 50 percent of the funds granted under this section shall be provided to entities other than states. Recipients of technical transfer grants may assign all or part of work under the grants to non-profit entities.

(b) *AUTHORIZATION.*—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

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ENERGY POLICY AND CONSERVATION ACT

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TABLE OF CONTENTS

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PART B—STRATEGIC PETROLEUM RESERVE

- Sec. 151. Declaration of policy.
- Sec. 152. Definitions.
- Sec. 153. Strategic Petroleum Reserve Office.
- Sec. 154. Strategic Petroleum Reserve.
- Sec. 155. Early Storage Reserve.
- Sec. 156. Industrial Petroleum Reserve.
- Sec. 157. Regional Petroleum Reserve.
- Sec. 158. Other storage reserves.
- Sec. 159. Review by Congress and implementation.
- Sec. 160. Petroleum products for storage in the Reserve.
- Sec. 161. Drawdown and distribution of the Reserve.
- Sec. 162. Coordination with import quota system.
- Sec. 163. Disclosure, inspection, investigation.
- Sec. 164. Naval petroleum reserves study.
- Sec. 165. Annual reports.
- Sec. 166. Authorization of appropriations.
- Sec. 167. SPR Petroleum Account.
- Sec. 168. Defense Petroleum Inventory.

* * * * *

PART D—ADDITIONAL OIL SECURITY PROTECTION

- Sec. 181. Short Title.
- Sec. 182. Purposes.
- Sec. 183. Completion of 750 million Barrel Reserve.
- Sec. 184. Enlargement of Reserve Beyond 750 million Barrels.
- Sec. 185. Acquisition of Petroleum Products.

PART D—EXPIRATION

- Sec. [181.] 191. Expiration.

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PART B—STRATEGIC PETROLEUM RESERVE

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DEFINITIONS

SEC. 152. As used in this part [and part C:] part C, and part D:

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DEFENSE PETROLEUM INVENTORY

SEC. 168. (a) Notwithstanding any other provision of this part, the Secretary may—

(1) acquire or construct, operate and maintain storage and facilities associated with a Defense Petroleum Inventory of at least ten million barrels of crude oil to meet petroleum product requirements of the Department of Defense; and

(2) acquire and store crude oil therein.

(b)(1) The acquisition and storage of crude oil in the Defense Petroleum Inventory shall be in addition to any acquisition or storage of crude oil for the Strategic Petroleum Reserve required by any other law, and crude oil acquired and stored under this section shall not be counted as part of the Strategic Petroleum Reserve.

(2) In carrying out the functions authorized by this section, the Secretary may exercise any authority available under this part.

(c)(1) Notwithstanding any other provision of this part, upon the request of the Secretary of Defense, crude oil acquired for or dedicated by the Defense Petroleum Inventory shall be drawn down and distributed by the Secretary to, or on behalf of, the Department of Defense for use, sale, or exchange. Crude oil in the Defense Petroleum Inventory may be drawn down and distributed, used, sold, or exchanged, without regard to—

(A) whether the crude oil has been commingled with petroleum products of the Strategic Petroleum Reserve;

(B) the requirements of this part concerning drawdown of the Strategic Petroleum Reserve; or

(C) otherwise applicable Federal contracting statutes and regulations.

(2) The Secretary of Energy shall exercise the authority provided by this subsection in a manner which does not adversely affect drawdown of the Strategic Petroleum Reserve.

(d) Upon the request of the Secretary of Defense, and subject to the availability of funds from the Department of Defense, the Secretary shall acquire and store in the Defense Petroleum Inventory crude oil to replace crude oil drawn down under subsection (c).

(e) An amendment to the Strategic Petroleum Reserve Plan relating to the exercise of this authority shall not be required.

(f) The Department of Defense shall reimburse the Secretary of Energy for—

(1) all costs of acquiring and storing crude oil in the Defense Petroleum Inventory, including the cost of associated facilities construction;

(2) drawdown and distribution services provided under this section, in amounts that the Secretary determines to be reasonable; and

(3) all costs of acquiring crude oil for the Strategic Petroleum Reserve to replace crude oil drawn down and distributed under subsection (c).

(g) Crude oil acquired for the Defense Petroleum Inventory under subsection (a) shall be transferred to the Strategic Petroleum Reserve, pursuant to subsection (f)(3), in reimbursement on a barrel-for-barrel basis for the cost of replacement petroleum products acquired for the Strategic Petroleum Reserve.

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PART D—ADDITIONAL OIL SECURITY PROTECTION

SHORT TITLE

SEC. 181.—This part may be cited as the Strategic Petroleum Reserve Enhancement Act of 1991.

PURPOSES

SEC. 182.—The purposes of this part are to—

(1) complete, at the earliest practicable date, storage of seven hundred and fifty million barrels of petroleum products in the Strategic Petroleum Reserve;

(2) facilitate progress, as rapidly as practicable, toward establishment of a one billion barrel Strategic Petroleum Reserve;

(3) authorize establishment of a Defense Petroleum Inventory of at least ten million barrels of petroleum products;

(4) initiate, at the earliest practicable date, the acquisition of petroleum product pursuant to section 171 of the Energy Policy and Conservation Act of 1990;

(5) acquire by purchase, exchange, or other arrangement, from one or more foreign governments, petroleum products for storage in the Strategic Petroleum Reserve or the Defense Petroleum Inventory; and

(6) provide the President with broad and flexible authority to achieve these objectives.

COMPLETION OF 750 MILLION BARREL RESERVE

SEC. 183.—(a) The President shall initiate such actions as are necessary to complete storage of seven hundred and fifty million barrels of petroleum products in the Strategic Petroleum Reserve at the earliest practicable time. Such actions may include the alternatives in section 185.

ENLARGEMENT OF RESERVE BEYOND 750 MILLION BARRELS

SEC. 184.—The President shall initiate such actions as are necessary to enlarge the Strategic Petroleum Reserve to one billion barrels as rapidly as possible. Such actions may include—

(1) either of the alternatives described in section 185; and

(2) the contracting for petroleum products for storage in facilities not owned by the United States.

ACQUISITION OF PETROLEUM PRODUCTS

SEC. 185.—(a) The President, acting through the Secretary of energy, may—

(1) acquire by purchase, exchange, or other arrangement, from one or more foreign governments, without the necessity for com-

petitive procurement, petroleum products for storage in the Strategic Petroleum Reserve or the Defense Petroleum Inventory; and

(2) contract, without regard to section 171(b)(2)(B) and 173 of the Energy Policy and Conservation Act (42 U.S.C. 6349(b)(2)(B)), or to the restrictions which Public Law 101-512 imposes on the leasing of crude oil, for storage in the Strategic Petroleum Reserve or the Defense Petroleum Inventory of petroleum products owned by one or more foreign governments.

(b) The Secretary may utilize such funds as are available in the SPR Petroleum Account to carry out the activities described in subsection (a), and may obligate and expend such funds to carry out those activities, in advance of the receipt of petroleum products.

(c) For the purpose of this part, the term "foreign government" means a foreign government, a foreign State-owned oil company, or an agent of either.

PART D—EXPIRATION

EXPIRATION

SEC. [181.] 191. Except as otherwise provided in title I, all authority under any provision of title I (other than a provision of such title amending another law) and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, September 30, 1994, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, September 30, 1994.

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NATIONAL ENERGY CONSERVATION POLICY ACT

TITLE 1—GENERAL PROVISIONS

SEC. 101. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Energy Conservation Policy Act".

(b) TABLE OF CONTENTS.—

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PART 6—RESIDENTIAL ENERGY EFFICIENCY RATINGS

Sec. 271. Rating guidelines .

Sec. 272. Technical assistance

Sec. 273. Authorization

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PART 6—RESIDENTIAL ENERGY EFFICIENCY RATING GUIDELINES

SEC. 271. VOLUNTARY RATING GUIDELINES.

(a) Within 18 months after the date of the enactment of the National Energy Security Act of 1991, the Secretary, in consultation

with the Secretary of Housing and Urban Development and other appropriate institutions, shall, by rule, promulgate voluntary guidelines that may be used by State and local governments, utilities, builders and others, that would enable the assignment of an energy efficiency rating to residential buildings.

(b) The voluntary guidelines under subsection (a) shall:

(1) provide for a uniform rating scale of the efficiency with which any residential building uses energy on an annual basis;

(2) provide that such rating shall take into account local climate conditions and construction practices, and does not discriminate among fuel types, except that solar energy collected on-site shall be credited toward the energy efficiency rating of such building;

(3) provide that all residential buildings can receive a rating at the time of sale;

(4) provide that the rating is prominently communicated to potential buyers and renters; and

(5) provide that the rating system is consistent with, and supportive of, the uniform plan for energy efficient mortgages developed pursuant to Section 946 of the Cranston-Gonzales National Affordable Housing Act (Public Law 101-625).

SEC. 272. TECHNICAL ASSISTANCE.

Within 18 months after the date of the enactment of the National Energy Security Act of 1991, the Secretary shall establish a program to provide technical assistance to State and local organizations to encourage the adoption of residential energy efficiency rating systems based on the voluntary guidelines promulgated under this part.

SEC. 273. AUTHORIZATION.

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this part.

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TITLE V—FEDERAL ENERGY INITIATIVE

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PART 3—FEDERAL ENERGY MANAGEMENT

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SEC. 543. ENERGY MANAGEMENT GOALS.

[(a) ENERGY PERFORMANCE GOAL FOR FEDERAL BUILDINGS.—(1) Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, its Federal buildings so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1995 is at least 10 percent less than the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1985.]

(a) ENERGY MANAGEMENT REQUIREMENT FOR FEDERAL BUILDINGS.—(1) Not later than January 1, 2000, each Federal agency shall, to the maximum extent practicable, install in Federal build-

ings under the control of such agency in the United States, all energy conservation measures with payback periods of less than ten years as calculated using the methods and procedures developed pursuant to section 544. Within two years after the date of enactment of the National Energy Security Act of 1991, each agency shall submit to the Secretary a list of projects meeting the ten-year payback criterion, the energy that each project will save and total energy and cost savings involved.

(2) An agency may exclude from the requirements of paragraph (1) any Federal building or collection of Federal buildings, and the associated energy consumption and gross square footage, if the head of such agency finds that compliance with the requirements of paragraph (1) would be impracticable. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such Federal buildings or collection of Federal buildings, the type and amount of energy consumed, the technical feasibility of making the desired changes, or the unique character or many facilities operated by the Departments of Defense and Energy. Each agency shall identify and list in each report made under section 548, the Federal buildings designated by it for such exclusion. The Section shall review such findings for consistency with the impracticability standards set forth herein, and may within 90 days after receipt of the findings, reverse a finding of impracticability, in which case the agency shall comply with the requirements of paragraph (1). This section shall not apply to an agency's facilities that generate or transmit electric energy, nor to the uranium enrichment facilities operated by the Department of Energy.

* * * * *

(b) IMPLEMENTATION STEPS.—To achieve the goal established in subsection (a), the Secretary of Energy shall consult with the Secretary of Defense and the Administrator of the General Services Administration in developing guidelines for the implementation of this Part, and, each agency shall—

“(1) prepare or update, within 6 months after the date of the enactment of the [Federal Energy Management Improvement Act of 1988,] National Energy Security Act of 1991, and submit to the Secretary of Energy a plan describing how the agency intends to meet such goal, including how it will implement this part, designate personnel primarily responsible for achieving such goal, and identify high priority projects and such plan shall include steps to take maximum advantage of contracts authorized under title VIII of this Act (42 U.S.C. 8287 et seq.), financial incentives, and other services provided by utilities for efficiency investment and other forms of financing to reduce the direct costs to the government;

“(2) perform energy surveys of its Federal buildings to the extent necessary[;], and update such surveys periodically, but not less than every three years;”;

“(3) using such surveys, apply energy conservation measures in a manner which will attain the goal established on subsection (a) in the most cost-effective manner practicable; and”

(3) *using such surveys, determine the cost and payback period of energy conservation measures likely to achieve the goals of this section;*

(4) *install those energy conservation measures that will attain the requirements of this section in a cost-effective manner as defined in Section 544, and*

[(4)] (5) *Ensure that the operation and maintenance procedures applied under this section are continued.*

SEC. 544. ESTABLISHMENT AND USE OF LIFE CYCLE COST METHODS AND PROCEDURES.

(a) **ESTABLISHMENT OF LIFE CYCLE COST METHODS AND PROCEDURES.**—The Secretary, in consultation with the Director of the Office of Management and Budget, the Secretary of Defense, the Director of the [National Bureau of Standards,] *National Institute of Standards and Technology* and the Administrator of the General Services Administration, shall—

* * * * *

(b) **USE OF LIFE CYCLE COST METHODS AND PROCEDURES.**—(1) The design of new Federal buildings, and the application of energy conservation measures to existing Federal buildings, shall be made using life cycle cost methods and procedures established under subsection (a).

(2) In leasing buildings for its own use or that of another agency, each [agency shall give appropriate preference to buildings which minimize life cycle costs.] *agency shall, after January 1, 1994, fully consider the energy efficiency of all potential building space at the time of renewing or entering into a new lease. Further, all government leased space constructed after January 1, 1994, shall meet model Federal energy conservation performance standards for new commercial buildings promulgated pursuant to Section 304 of the Energy Conservation and Production Act (Pub. L. No. 94-385).*

* * * * *

SEC. 545. BUDGET TREATMENT FOR ENERGY CONSERVATION MEASURES.

Each agency, in support of the President's annual budget request to the Congress, shall specifically set forth and identify funds requested for energy conservation measures *as needed to meet the requirements of section 543.*

SEC. 546. INCENTIVES FOR AGENCIES.

(a) **IN GENERAL.**—Each agency shall establish a program of incentives for conserving, and otherwise making more efficient use of, energy as a result of entering into contracts under title VIII of this Act.

[(b) **IMPLEMENTATION.**—The head of each agency shall, no later than 120 days after the date of the enactment of the Federal Energy Management Improvement Act of 1988, implement procedures for entering into such contracts and for identifying, verifying, and utilizing, on a fiscal year basis, the cost savings resulting from such contracts.]

(b) **IMPLEMENTATION.**—*To facilitate the financing of energy conservation measures, each Federal agency shall promote the use of contracts authorized by title VIII of this Act (42 U.S.C. 8287 et seq.).*

The Secretary, in consultation with the Secretary of Defense and the Administrator of the General Services Administration, within six months after the date of the enactment of the National Energy Security Act of 1991, shall develop appropriate procedures and methods for use by Federal agencies to select energy service contractors that will achieve the intent of this section in a cost-effective manner. Notwithstanding any other procurement laws and regulations, such procedures and methods shall apply to the selection of energy service contractors by each Federal agency.

* * * * *

SEC. 548. REPORTS.

(a) **REPORTS TO THE SECRETARY.**—**[Each]** *In addition to the plan required to be submitted to the Secretary pursuant to Section 543(b)(1), each agency shall transmit a report to the Secretary, at times specified by the Secretary but at least annually, with complete information on its activities under this part, including information on—*

* * * * *

(b) **REPORTS TO CONGRESS.**—*The Secretary shall report annually, by April 2 of each year, with respect to each fiscal year beginning after the date of the enactment of this subsection, to the Congress—*

(1) *on all activities carried out under this part by each agency and on the progress made toward achievement of the objectives of this part, including a copy of the list of the exclusions made under section 543(a)(2);*

* * * * *

SEC. 552. UTILITY INCENTIVE PROGRAMS.—*Federal agencies are permitted and encouraged to participate in programs conducted by any gas or electric utility for the management of energy demand or for energy conservation in Federally owned or leased facilities. Federal agencies may accept incentives designed to encourage energy demand management or energy conservation, generally available from any such utility to its customers, to adopt technologies and practices that are determined to be cost-effective.*

SEC. 553. SHARED ENERGY SAVINGS.—(a) *The Secretary shall develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of these contracts and will reduce the administrative effort and cost on the part of the government as well as the private customers.*

(b)(1) *In carrying out subsection (a), the Secretary may:*

(A) *request statements of qualifications, including financial and performance information, from firms engaged in providing shared energy savings contracting;*

(B) *designate from the statements received, with an update at least annually, those firms that are presumptively qualified to provide shared energy savings services;*

(C) *select at least three firms from the qualifying list to conduct discussions concerning a particular proposed project, including requesting a technical and price proposal from such selected firms for such project; and*

(D) select from such firms the most qualified firm to provide shared energy savings services pursuant to a contractual arrangement that the Secretary determines is fair and reasonable, taking into account the estimated value of the services to be rendered and the scope and nature of the project.

(2) In carrying out subsection (a), the Secretary may also provide for the direct negotiation by departments, agencies, and instrumentalities, of contracts with shared energy savings contractors that have been selected competitively and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

SEC. 554. FEDERAL PRODUCT SCHEDULE.—Not later than two years after the date of enactment of the National Energy Security Act of 1991, the Administrator of the General Services Administration, in consultation with the Secretary, shall conduct an analysis of significant energy consuming products in the Federal product schedule and develop and implement a method to identify those products which offer cost-effective opportunities to reduce energy consumption and costs. The Administrator shall also issue guidelines for users of the Federal Product Schedule to encourage the purchase of identified energy efficient models.

SEC. 555. PURCHASE OF FEDERAL VEHICLES.—The Administrator of the General Services Administration, through the Automotive Commodity Center, in evaluating and accepting bids for the purchase of passenger vehicles and light trucks to meet specified requirements, shall consider the fuel efficiency of the passenger vehicles and light trucks offered in the bid, and the probable fuel and cost savings to the Federal government over the expected term of Federal use of such passenger vehicles and light trucks.

SEC. 556. FEDERAL ENERGY EFFICIENCY PROJECTS FUND. (a) **IN GENERAL.**—Not later than one year after the date of enactment of the National Energy Security Act of 1991, the Secretary shall establish guidelines for the transfer of up to \$1 million per project to encourage any Federal agency to undertake energy efficiency projects in Federally owned facilities.

(b) **PROJECT SELECTION.**—The Secretary shall establish procedures for the receipt of proposals under this section. The Secretary shall consider the following factors in determining whether to provide funding under subsection (a):

- (1) The cost-effectiveness of the project;
- (2) The proportion of energy and cost savings anticipated to the Federal government;
- (3) The amount of funding committed to the project by the agency requesting financial assistance;
- (4) The extent that a proposal leverages financing from other non-Federal sources; and
- (5) Any other factor which the Secretary determines will result in the greatest amount of energy and cost savings to the Federal government.

(c) **REPORTS.**—The Secretary shall report annually to Congress, in the supporting documents accompanying the President's budget, on the activities under this section. The report shall include the projects funded and the projected energy and cost savings from installed measures.

(d) *AUTHORIZATION.*—For purposes of this subsection, there is authorized to be appropriated, and to remain available until expended, not more than \$50 million.

SEC. 557. Financial Incentive Program for Facility Energy Managers.—(1) The Secretary shall establish a financial bonus program, not to exceed \$5,000 per award, to reward facility energy managers for outstanding energy savings in Federal agencies.

(2) Not later than June 1, 1992, the Secretary shall issue procedures for the establishment of a bonus program, including the criteria to be used in selecting outstanding facility energy managers. Such criteria shall include, but not be limited to, evident success in generating utility incentives and shared energy saving contracts and the amount of energy saved by conservation and energy efficiency projects.

(3) Each year the Secretary shall publish and disseminate to Federal agencies a report highlighting the achievements of bonus award winners.

(4) There is authorized to be appropriated to carry out this subsection not more than \$250,000 for each of the fiscal years 1992, 1993, and 1994.

* * * * *

NATURAL GAS ACT

* * * * *

NECESSITY FOR REGULATION OF NATURAL-GAS COMPANIES

SECTION 1. (a) * * *

* * * * *

(d) The provisions of this Act shall not apply to any person by reason of, or with respect to, any sale or transportation of Vehicular Natural Gas if such person is (i) not otherwise a natural-gas company, or (ii) primarily subject to regulation by a State commission, whether or not such State commission has, or is exercising, jurisdiction over the sale, sale for resale, or transportation of Vehicular Natural Gas.

* * * * *

SEC. 2. When used in this act, unless the context otherwise requires—

(10) "Vehicular Natural Gas" means natural gas that is ultimately used as a fuel in a motor vehicle.

* * * * *

EXPORTATION OR IMPORTATION OF NATURAL GAS

SEC. 3. After six months from the date on which this act takes effect on person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that

the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate. *The Commission shall condition any import authorization pursuant to this section to redress any anti-competitive impacts on United States' natural gas producers including, but not limited to, competitive disparities resulting from different rate designs applied to the pipeline transportation of domestic natural gas and the pipeline transportation of imported natural gas.*

* * * * *

RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES

SEC. 4. (a) * * *

* * * * *

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after **[thirty days' notice]** *sixty days' notice* to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the **[thirty days' notice]** *sixty days' notice* herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

* * * * *

(f) *Subsections (c), (d) and (e) of this section do not apply to the transportation or sale of natural gas through facilities authorized by a certificate of public convenience and necessity issued under section 7(c)(1)(G) of this Act.*

(g) *Under such rules and regulations as the Commission may prescribe to preclude anticompetitive conduct, natural-gas companies may jointly file with the Commission rates for the sequential transportation of natural gas through their facilities.*

* * * * *

FIXING RATE AND CHARGES; DETERMINATION OF COST OF PRODUCTION
OR TRANSPORTATION

SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission,

or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however, That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates. This subsection does not apply to any rate, charge, classification or practice by a natural-gas company in connection with the transportation or sale of natural gas through facilities authorized by a certificate issued under section 7(c)(1)(G) of this Act.*

EXTENSION OF FACILITIES; ABANDONMENT OF SERVICE

SEC. 7. (a) (1) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas to do so would impair its ability to render adequate service to its customers.*

(2) *Upon the petition of any person, the Commission by order may direct an interstate pipeline as defined in section (2)(15) of the Natural Gas Policy Act of 1978, for the sole purpose of receiving natural gas from the petitioner, to establish, at petitioner's expense, and upon such reasonable terms as the Commission may prescribe, physical connection of the interstate pipeline's transportation facilities with the petitioner's production or gathering facilities, the petitioner's intrastate pipeline as defined in section 2(16) of the Natural Gas Policy Act of 1978 (limited to the production area as defined by the Commission), or the petitioner's pipeline certificated pursuant to subparagraph (c)(1)(G) of this section (limited to the production area as defined by the Commission); Provided, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel an interstate pipeline to establish physical connection when to do so would impair its ability to render adequate service to its customers.*

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any

service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment. *This subsection does not apply to any facility or service certificated pursuant to subparagraph (c)(1)(G) of this section.*

(c)(1)(A) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefore, or acquire or operate any such facilities or extension thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however:* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

(B) *In any case not described in the proviso of subparagraph (A), the Commission shall file notice in the Federal Register of the proposed certificate of public convenience and necessity as soon as the required information in connection therewith has been received by the Commission. If no party has filed a protest or objection in response to such notice within 60 days after publication of such notice, the certificate of public convenience and necessity shall be deemed to be issued: Provided, That notwithstanding the filing of a protest or objection a certificate shall be deemed issued if all protests and objections are withdrawn.*

[(B)](C) In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may be regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

(D) *The term "facilities" as used in this subsection shall exclude facilities which constitute the replacement or repair of existing fa-*

cilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable, provided (1) that such replacement or repair does not result in a reduction or abandonment of service by means of such facilities, (2) that such replacement or repair has substantially equivalent designed delivery capacity as the particular facilities being replaced or repaired, and (3) that the cost of such replacement or repair shall not exceed \$20 million dollars per project, as adjusted pursuant to the Implicit Price Deflator for GNP. Nothing herein shall preclude a natural-gas company from repairing or replacing facilities as may be necessary to meet the requirements of the Natural Gas Pipeline Safety Act of 1968.

(E) In such hearing under subparagraph (C), proof of binding contractual commitments by bona fide shippers for firm natural gas service to be rendered utilizing the facilities proposed to be constructed or extended shall be conclusive evidence of the need for such proposed service and facilities, and shall be sufficient to dismiss any claim of mutual exclusivity by another applicant.

(F) In such hearing under subparagraph (C), the Commission, where appropriate, may phase its consideration of issues raised in connection with the application and may issue an initial order containing preliminary findings with respect to such issues. Notwithstanding the preliminary findings in such initial order, the issuance of a certificate of public convenience and necessity will be subject to a final order based upon the complete record of the hearing under subparagraph (C).

(G) Upon application the Commission shall issue a certificate of public convenience and necessity for the construction, extension and operation of facilities for the transportation or sale of natural gas without requiring a hearing or further proof that the public convenience and necessity would be served by those facilities; Provided, That, subject to the provisions of subsection (k) of this section, the requirements of subsections (i) and (j) of this section are met. Such a certificate shall be non-exclusive and non-prejudicial to any other authorization under the Natural Gas Act or the Natural Gas Policy Act of 1978.

* * * * *

(3)(A) For purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable environmental laws, the authorization of construction of facilities by issuance of a certificate of public convenience and necessity by the Commission is the only Federal action that may be considered a major Federal action requiring a detailed statement on the environmental impact of the proposed action in connection with the construction or extension of facilities. The Commission may set reasonable time limits for consultation with the other Federal and state agencies and departments which participate in the review of a proposed facility, and may set reasonable time limits for those agencies and departments to complete their review and submit comments to the Commission.

(B) Where environmental documents are prepared in connection with applications for authority to construct, extend or operate facilities under this Act, the Commission shall permit, at the election of

the applicant, a contractor, consultant or other person funded by the applicant to prepare such environmental document. The Commission shall permit the applicant to select a contractor, consultant or other person from among a list of such individuals or companies determined by the Commission to be qualified to do such work. The Commission shall establish the scope of work and procedures to assure that the contractor, consultant or other person has no financial or other potential conflict of interest in the outcome of the proceeding. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.

(C) Where an environmental assessment is prepared in connection with applications for authority to construct, extend or operate facilities under this Act, the Commission shall permit an applicant, or a contractor, consultant or other person selected by the applicant, to prepare such environmental assessment. The Commission shall institute procedures, including pre-application consultations, to advise potential applicants of studies or other information foreseeably required by the Commission. The Commission shall allow the filing of such applicant-prepared environmental assessments as part of the application. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.

(D) The Commission shall not infer any control or responsibility over nonjurisdictional activities for purposes of carrying out its environmental responsibilities under the National Environmental Policy Act of 1969.

* * * * *

(i) For the purposes of subparagraph (c)(1)(G) of this section—

(1) The Commission shall issue a certificate of public convenience and necessity only if it finds that the construction, extension and operation of facilities shall not impair any certificate holder's ability to render adequate service to its customers, and only if, in addition to any other terms the Commission may attach, the following terms and conditions are attached to such certificate to satisfy the following requirements—

(A) No costs or expenses incurred in relation to the construction, extension and operation of facilities, or the sale of such facilities, covered by a certificate issued pursuant to subparagraph (c)(1)(G) of this section may be included in the rates and charges of any other rate schedule filed with the Commission under this Act or the Natural Gas Policy Act of 1978.

(B) The holder of a certificate issued pursuant to subparagraph (c)(1)(G) of this section shall not be required to credit any revenues received in relation to providing service under such certificate, or the sale of facilities authorized under such certificate, when determining the rates and charges of any other rate schedule filed with the Commission under this Act or the Natural Gas Policy Act of 1978.

(C) Notwithstanding section 15(a) of this Act, the holder of a certificate issued under subparagraph (c)(1)(G) of this section shall not participate in any proceedings (other than those it may subsequently initiate) for the construction, ex-

tension or operation of facilities that would serve the same market served by the facilities authorized by the holder's certificate issued under subparagraph (c)(1)(G) of this section.

(D) Under such rules and regulations as the Commission may prescribe, the holder of a certificate issued under subparagraph (c)(1)(G) of this section shall file with the Commission within such time and in such form as the Commission may prescribe, and shall keep open in convenient form and place for public inspection, copies of all agreements required to be filed with the Commission pursuant to subsection (j) of this section.

(E) The holder of a certificate issued under subparagraph (c)(1)(G) of this section shall maintain a separate system of books, accounts and records for the facilities and services authorized under such certificate.

(2) The Commission shall assure that all agreements between the certificate holder and all persons, including affiliates of the certificate holder, contracting for transportation or sales service utilizing facilities authorized in a certificate issued under subparagraph (c)(1)(G) of this section are negotiated at arms length.

(3) The Commission shall provide reasonable public notice of the application for the issuance of a certificate of public convenience and necessity pursuant to subparagraph (c)(1)(G) of this section.

(j) For purposes of subparagraph (c)(1)(G) of this section—

(1) Not later than 60 days prior to the commencement of transportation or sales service pursuant to a certificate issued under subparagraph (c)(1)(G) of this section, or at such time as the Commission may find necessary and reasonable, the certificate holder shall file with the Commission copies of all agreements between the certificate holder and all persons, including affiliates of the certificate holder, contracting for transportation or sales service utilizing facilities authorized in a certificate issued under subparagraph (c)(1)(G) of this section. Subsequent to the commencement of transportation or sales service utilizing facilities operated under a certificate issued under subparagraph (c)(1)(G) of this section, the certificate holder shall file with the Commission not later than ten days prior to the initiation of any new service utilizing facilities authorized under such certificates a copy of any new or amended agreement entered into by the certificate holder and any person, including any affiliate of the certificate holder, contracting for transportation or sales service utilizing facilities authorized under such certificate. The Commission shall keep and make available for public inspection all agreements required to be filed with the Commission pursuant to this paragraph.

(2) The rates, charges, classifications or practices for the transportation or sale of natural gas contained in the agreements filed with the Commission pursuant to paragraph (j)(1) of this section shall be presumed to be just and reasonable. If, however, the Commission, after a hearing held upon the petition of a person who has made a bona-fide offer to enter into a contract, or who has entered into a contract, for the transporta-

tion or sale of natural gas utilizing facilities authorized in a certificate issued under subparagraph (c)(1)(G) of this section, finds that the failure to provide a requested rate, charge, classification or practice in connection with the requested transportation or sale of natural gas through facilities constructed, extended or operated under a certificate issued under subparagraph (c)(1)(G) of this section is unjust, unreasonable, unduly discriminatory or preferential, the Commission, considering all relevant factors, shall determine the rates, charges, classification or practices which are not unjust, unreasonable, unduly discriminatory or preferential to be observed and in force with respect to the transportation or sale of natural gas to be provided to the petitioner, and shall fix the same by order; Provided, That the Commission may not order the requested service to the extent that it finds that capacity is not available. Unless the Commission issues a final order on a petition filed pursuant to this paragraph within one hundred and twenty days after it is filed, such petition shall be deemed denied.

(k) In any case where a certificate providing for construction or extension of facilities under subparagraph (c)(1)(G) of this section is opposed by a local distribution company on grounds that such certificate would result in the displacement of a sale or transportation service being provided by such local distribution company, the Commission shall promptly set the matter for a hearing on the record and shall decide by final order on rehearing issued within 90 days of the filing of such opposition whether such construction or extension of facilities pursuant to the certificate would displace a sale or transportation service being provided by such local distribution company. If the Commission finds that such construction or extension of facilities would result in the displacement of a sale or transportation service being provided by such local distribution company, the application for a certificate of public convenience and necessity filed pursuant to subparagraph (c)(1)(G) of this section shall, at the option of the applicant, be deemed filed for consideration pursuant to subparagraph (c)(1)(A) of this section. For purposes of this subsection, the term "local distribution company" shall have the same meaning as in section 2(17) of the Natural Gas Policy Act of 1978, and a holder of a service area determination under section 7(f) of this Act shall be considered a local distribution company.

REHEARING: COURT REVIEW OF ORDERS

SEC. 19. (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. [Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have it is been denied.] Unless the Commission issues a final order on the application for rehearing

within sixty days after it is filed, such application shall be deemed denied: Provided, That the Commission may, for good cause, extend the period for rehearing an additional ninety days or, in the case of a rulemaking proceeding, an additional one hundred and twenty days. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act.

(b) *Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within thirty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. The petition shall set forth specifically the ground or grounds upon which such petition is based. A copy of such petition shall forthwith be transmitted by the clerk of the court to the chairman of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any part shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission

and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in [former] sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, sec. 1254).

* * * * *

NATURAL GAS POLICY ACT OF 1978

* * * * *

SUBTITLE B—OTHER AUTHORITIES AND REQUIREMENTS

SEC. 311. [AUTHORIZATION OF CERTAIN SALES AND TRANSPORTATION.] AUTHORIZATIONS OF CERTAIN SALES, TRANSPORTATION AND CONSTRUCTION.

(a) [COMMISSION APPROVAL OF TRANSPORTATION] Commission Approval of Transportation and Construction—

[(1) INTERSTATE PIPELINES.—

[(A) IN GENERAL.—The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of—

[(i) any intrastate pipeline; and

[(ii) any local distribution company.

[(B) JUST AND REASONABLE RATES.—The rates and charges of any interstate pipeline with respect to any transportation authorized under subparagraph (A) shall be just and reasonable (within the meaning of the Natural Gas Act).]

(1) INTERSTATE PIPELINES.—

(A) IN GENERAL.— *The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of—*

(i) any intrastate pipeline,

(ii) any local distribution company, or

(iii) any other person including the interstate pipeline itself.

(B) JUST AND REASONABLE RATES.—*The rates and charges of any interstate pipeline with respect to any transportation authorized under subparagraph (A) shall be just and reasonable (within the meaning of the Natural Gas Act).*

(C) NON-DISCRIMINATORY TRANSPORTATION.—*Any transportation authorized under subparagraph (A) shall not be unjust, unreasonable, unduly discriminatory or preferential (within the meaning of the Natural Gas Act).*

(D) *CONSTRUCTION.*—Upon sixty days notification to the affected State commission, an interstate pipeline may construct facilities for transportation service provided under this subsection: *Provided, That construction under this subsection shall not occur in the event such construction would result in the displacement of a sale or transportation service being provided by a local distribution company, unless such local distribution company consents thereto. In any case where such construction is opposed by a local distribution company on grounds that such construction would result in the displacement of a sale or transportation service being provided by such local distribution company, the Commission shall promptly set the matter for hearing on the record and shall decide by a final order on rehearing issued within 90 days of the filing of such opposition whether the construction would displace a sale or transportation service being provided by such local distribution company. If the Commission finds that such construction would result in the displacement of a sale or transportation service being provided by such local distribution company, the interstate pipeline may file an application for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for authority to construct or extend such facilities. Activities authorized under this paragraph are not subject to State regulation. For purposes of this subparagraph, a holder of a service area determination under section 7(f) of the Natural Gas Act shall be considered a local distribution company.*

(2) *INTRASTATE PIPELINES.*—

[(A) *IN GENERAL.*—The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas on behalf of—

[(i) any interstate pipeline; and

[(ii) any local distribution company served by any interstate pipeline.]

(A) *IN GENERAL.*—The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas on behalf of—

(i) any interstate pipeline,

(ii) any local distribution company served by an interstate pipeline, or

(iii) any other person, including the intrastate pipeline itself, in interstate commerce (within the meaning of the Natural Gas Act).

* * * * *

SEC. 506. JUDICIAL REVIEW.

(a) *ORDERS.*—

(2) *REHEARING.*—Any person aggrieved by any order issued by the Commission in a proceeding under this Act to which such person is a party may apply for a rehearing within 30 days after the issuance of such order. Any application for rehearing shall set forth the specific ground upon which such application is based. Upon the filing of such application, the Com-

mission may grant or deny the requested rehearing or modify the original order without further hearing. [Unless the Commission acts upon such application for rehearing within 30 days after it is filed, such application shall be deemed to have been denied.] *Unless the Commission issues a final order on the application for rehearing within 60 days after it is filed, such application shall be deemed denied: Provided, That the Commission may, for good cause, extend the period for rehearing an additional ninety days or, in the case of a rulemaking proceeding, an additional one hundred and twenty days. No person may bring an action under this section to obtain judicial review of any order of the Commission unless—*

* * * * *

(4) JUDICIAL REVIEW.—[Any person who is a party to a proceeding under this Act aggrieved by any final order issued by the Commission in such proceeding may obtain review of such order in the United State Court of Appeals for any circuit in which the party to which such order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. Review shall be obtained by filing a written petition, requesting that such order be modified or set aside in whole or in part, in such Court of Appeals within 60 days after the final action of the Commission on the application for rehearing required under paragraph (2). A copy of such petition shall forthwith be transmitted by the clerk of such court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.] *Any person who is a party to a proceeding under this Act aggrieved by any final order issued by the Commission in such proceeding may obtain review of such order in the United States Court of Appeals for any circuit in which the party to which such order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. Review shall be obtained by filing a written petition, requesting that such order be modified or set aside in whole or in part, in such Court of Appeals within 30 days after the final action of the Commission on the application for rehearing required under paragraph (2). The petition shall set forth specifically the ground or grounds upon which such petition is based. A copy of such petition shall forthwith be transmitted by the clerk of the court to the chairman of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to such order of the Commission shall be considered by the court if such objection was not urged before the Commission in the application for rehearing unless there was reasonable ground for the failure to do so. The finding of*

the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as the court deems proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive. The Commission shall also file with the court its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

* * * * *

THE ATOMIC ENERGY ACT OF 1954

AN ACT for the development and control of atomic energy

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ATOMIC ENERGY ACT OF 1954

TITLE I—ATOMIC ENERGY

CHAPTER 5. PRODUCTION OF SPECIAL NUCLEAR MATERIAL

SEC. 41. OWNERSHIP AND OPERATION OF PRODUCTION FACILITIES.—

a. OWNERSHIP OF PRODUCTION FACILITIES.—the Commission, as agent of and on behalf of the United States, shall be the exclusive owner of all production facilities other than facilities which (1) are useful in the conduct of research and development activities in the fields specified in section 31, and do not, in the opinion of the Commission, have a potential production rate adequate to enable the user of such facilities to produce within a reasonable period of time a sufficient quantity of special nuclear material to produce an atomic weapon; [or] (2) are licensed by the Commission pursuant to this Act [.] ; or (3) are owned by the United States Enrichment Corporation.

* * * * *

SEC. 53. DOMESTIC DISTRIBUTION OF SPECIAL NUCLEAR MATERIAL.—

a. the Commission is authorized (i) to issue licenses to transfer or receive in interstate commerce, transfer, deliver, acquire, possess, own, receive possession of or title to, import, or export under the terms of an agreement for cooperation arranged pursuant to sec-

tion 123, special nuclear material, (ii) to make special nuclear material available for the period of the license, and (iii) to distribute special nuclear material within the United States to qualified applicants requesting such material—

(1) for the conduct of research and development activities of the types specified in section 31;

(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 104;

(3) for use under a license issued pursuant to section 103;

(4) for such other uses as the Commission determines to be appropriate to carry out the purposes of this Act.

b. The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distinction of special nuclear material depending upon the degree of importance to the common defense and security or to the health and safety of the public of—

(1) the physical characteristics of the special nuclear material to be distributed;

(2) the quantities of special nuclear material to be distributed; and

(3) the intended use of the special nuclear material to be distributed.

(c)(1) The commission may distribute special nuclear material licensed under this section by sale, lease, lease with option to buy, or grant, [or through the provision of production or enrichment services;] *Provided, however,* That unless otherwise authorized by law, the Commission shall not alter after December 31, 1970; distribute special nuclear material except by sale [or through the provision of production or enrichment services] to any person who possesses or operates a utilization facility under a license issued pursuant to section 103 or 104 b. for use in the course of activities under such license; nor shall the Commission permit any such person after June 30, 1973, to continue leasing for use in the course of such activities special nuclear material previously leased to such person by the Commission.

* * * * *

CHAPTER 14. GENERAL AUTHORITY

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

* * * * *

[v. (A) enter into contracts with persons licensed under section 53, 63, 103 or 104 for such period of time as the Commission may deem necessary or desirable to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission; and

[(B) enter into contracts to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission in accordance with and within the period of an agreement for cooperation arranged pursuant to section 123 while comparable services are made

available pursuant to paragraph (A) of this subsection: *Provided*, That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices established under this subsection shall be on a basis of recovery of the Government's costs over a reasonable period of time: *And provided further*, That the Commission, to the extent necessary to assure that maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States. The Commission shall establish criteria in writing setting forth the terms and conditions under which services provided under this subsection shall be made available including the extent to which such services will be made available for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States: *Provided*, That before the Commission establishes such criteria, the proposed criteria shall be submitted to the Joint Committee, and a period of forty-five days shall elapse while Congress is in session (in computing the forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days) unless the Joint Committee by resolution in writing waives the conditions of, or all or any portion of, such forty-five-day period.】

【w.】 v. prescribe and collect from any other Government agency, which applies for or is issued a license for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or 104 b., any fee, charge, or price which it may require, in accordance with the provisions of section 483 a. of title 31 of the United States Code or any other law, of applicants for, or holders of, such licenses.

【x.】 w. Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure.

(1) that an adequate bond, surety, or other arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 11 e. (2), by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and

(2) that—

(A) in the case of any such license issued or renewed after the date of the enactment of this subsection, the need for long-term maintenance and monitoring of such sites, structures and equipment of termination of such license will be minimized, and, to the maximum extent practicable, eliminated; and

(B) in the case of each license for such material (whether in effect on the date of the enactment of this section or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material is defined in section 11 e. (2), will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the Commission determines that such bonds or arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection.

* * * * *

CHAPTER 21. DEFENSE NUCLEAR FACILITIES SAFETY BOARD

* * * * *

SEC. 318. DEFINITION.

As used in this chapter, the term 'Department of Energy defense nuclear facility' means any of the following:

(1) A production facility or utilization facility (as defined in section 11 of this Act) that is under the control or jurisdiction of the Secretary of Energy and that is operated for national security purposes, but the term does not include—

(A) any facility or activity covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program;

(B) any facility or activity involved with the assembly or testing of nuclear explosives or with the transportation of nuclear explosives or nuclear material; or

(C) any facility that does not conduct atomic energy defense activities[.]

(D) any facility owned by the United States Enrichment Corporation.

(2) A nuclear waste storage facility under the control or jurisdiction of the Secretary of Energy, but the term does not include a facility developed pursuant to the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) and licensed by the Nuclear Regulatory Commission.

* * * * *

TITLE II—UNITED STATES ENRICHMENT CORPORATION

CHAPTER 21. FINDINGS

SEC. 1101. FINDINGS.—*The Congress of the United States finds that:*

a. *The enrichment of uranium is essential to the national security and energy security of the United States.*

b. *A competitive, well-managed and efficient enrichment enterprise provides important economic benefits to the United States and contributes to a highly favorable foreign trade balance.*

c. *A strong United States enrichment enterprise promotes United States nonproliferation policies by requiring accountability for United States enriched uranium.*

d. *The operation of uranium enrichment facilities must meet high standards for environmental health and safety.*

e. *The operation and management of a uranium enrichment enterprise requires a commercial business orientation in order to engender customer support and confidence, and customers, rather than the taxpayers at large, should bear the costs of commercial uranium enrichment services.*

f. *The optimal level of expenditures for the uranium enrichment enterprise fluctuates and cannot be accurately predicted or efficiently financed if subject to annual authorization and appropriation.*

g. *Flexibility is essential to adapt business operations to a competitive marketplace.*

h. *The events of the recent past, including the emergence of foreign competition, have brought new and unforeseen forces to bear upon the management and operation of the Government's uranium enrichment enterprise.*

i. *The present operation of the uranium enrichment enterprise must be changed so as to further the national interest in the enterprise and respond to the competitive demand placed upon it by market forces, while continuing to meet the paramount objective of ensuring the Nation's common defense and security.*

CHAPTER 22. DEFINITIONS, ESTABLISHMENT OF CORPORATION AND PURPOSES

SEC. 1201. DEFINITIONS.—*For the purpose of this title:*

a. *The term "Secretary" means the Secretary of Energy.*

b. *The term "Department" means the Department of Energy of the United States.*

c. *The term "Administrator" means the chief executive officer of the United States Enrichment Corporation.*

d. *The term "Corporation" means the United States Enrichment Corporation.*

e. *The term "Corporate Board" means the appointed members of the official advisory panel appointed by the President pursuant to section 1503 of this title.*

f. *The term "uranium enrichment" means the separation of uranium of a given isotopic content into two components, one*

having a higher percentage of a fissile isotope and one having a lower percentage.

g. The term "remedial action" has the same meaning as defined in section 120(24) of the Comprehensive Environmental Response, Compensation and Liability Act.

h. The term "decontamination and decommissioning" means those activities undertaken to decontaminate and decommission inactive facilities that have residual radioactive or mixed radioactive and hazardous chemical contamination.

SEC. 1202. ESTABLISHMENT OF THE CORPORATION.—

a. There is hereby created a body corporate to be known as the "United States Enrichment Corporation".

b. The Corporation shall—

(1) be established as a wholly-owned Government corporation subject to the Government Corporation Control Act, as amended (31 U.S.C. section 9101-9109), except as otherwise provided herein; and

(2) be an agency and instrumentality of the United States.

SEC. 1203. PURPOSES.—The Corporation is created for the following purposes:

a. to acquire feed material for uranium enrichment, enriched uranium, the Department's uranium previously set aside for commercial purposes, and the Department's uranium enrichment and related facilities;

b. to operate, and as required by business conditions, to expand or construct facilities for uranium enrichment or both;

c. to market and sell enriched uranium and uranium enrichment and related services to—

(A) the Department for governmental purposes; and

(B) qualified domestic and foreign persons;

d. to conduct research and development as required to meet corporate objectives for the purpose of identifying, evaluating, improving and testing processes for uranium enrichment;

e. to operate, as a commercial enterprise, on a profitable and efficient basis; in order to maximize the long term economic value of the Corporation to the United States Government including the payment of dividends to the Treasury as a return on the United States Government investment;

f. to conduct the business as a self-financing corporation and eliminate the need for appropriations or other sources of Government financing after enactment of this title;

g. to maintain a reliable and economical domestic source of enrichment services;

h. to conduct its activities in a manner consistent with the health and safety of the public;

i. to continue to meet the paramount objectives of ensuring the Nation's common defense and security (including consideration of United States policies concerning nonproliferation of atomic weapons and other nonpeaceful uses of atomic energy); and

j. to take all other lawful action in furtherance of the foregoing purposes.

CHAPTER 23. CORPORATE OFFICES

SEC. 1301. CORPORATE OFFICES.—

The Corporation shall maintain an office for the service of process and papers in the District of Columbia, and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. The Corporation may establish offices in such other place or places as it may deem necessary or appropriate in the conduct of its business.

CHAPTER 24. POWERS AND DUTIES OF THE CORPORATION

SEC. 1401. SPECIFIC CORPORATE POWERS AND DUTIES.—

The Corporation—

a. shall perform uranium enrichment or provide for uranium to be enriched by others at facilities of the Corporation; contracts in existence as of the date of enactment of this title between the Department and persons under contract to perform uranium enrichment and related services at facilities of the Department shall continue in effect as if the Corporation, rather than the Department, had executed these contracts;

b. shall conduct, or provide for the conduct of, research and development activities related to the isotopic separation of uranium as the Corporation deems necessary or advisable for purposes of maintaining the Corporation as a continuing, commercial enterprise operating on a profitable and efficient basis;

c. may acquire or distribute enriched uranium, feed material for uranium enrichment or depleted uranium in transactions with—

(1) persons licensed under sections 53, 63, 103, or 104 of title I in accordance with the licenses held by such persons;

(2) persons in accordance with, and within the period of, an agreement for cooperation arranged pursuant to section 123 of title I; or

(3) as otherwise authorized by law;

d. may—

(1) enter into contracts with persons licensed under sections 53, 63, 103, or 104 of title I for such periods of time as the Corporation may deem necessary or desirable, to provide uranium or uranium enrichment and related services; and

(2) enter into contracts to provide uranium or uranium enrichment and related services in accordance with, and within the period of, an agreement for cooperation arranged pursuant to section 123 of title I or as otherwise authorized by law;

e. shall sell to the Department as provided in this title, and without regard to section 57e. of title I or the provisions of 31 U.S.C. 1535, such amounts of uranium or uranium enrichment and related services as the Department may determine from time to time are required: (1) for the Department to carry out Presidential direction and authorizations pursuant to section 91 of title I; and (2) for the conduct of other Department programs;

f. may grant licenses, both exclusive and nonexclusive, for the use of patent and patent applications owned by the Corporation, and establish and collect charges, in the form of royalties or otherwise, for utilization of Corporation-owned facilities, equip-

ment, patents, and technical information of a proprietary nature pertaining to the Corporation's activities.

SEC. 1402. GENERAL POWERS OF THE CORPORATION.—In order to accomplish the purposes of this title, the Corporation—

a. shall have perpetual succession unless dissolved by the Act of Congress;

b. may adopt, alter, and use a corporate seal, which shall be judicially noticed;

c. may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings;

d. may indemnify the Administrator, officers, attorneys, agents and employees of the Corporation for liabilities and expenses incurred in connection with their corporate activities;

e. may adopt, amend, and repeal bylaws, rules and regulations governing the manner in which its business may be conducted and the power granted to it by law may be exercised and enjoyed;

f. (1) may acquire, purchase, lease, and hold real and personal property including patents and proprietary data, as it deems necessary in the transaction of its business, and sell, lease, grant, and dispose of such real and personal property, as it deems necessary to effectuate the purposes of this title and without regard to the Federal Property and Administrative Services Act of 1949, as amended;

(2) Purchases, contracts for the construction, maintenance, or management and operation of facilities and contracts for supplies or services, except personal services, made by the Corporation shall be made after advertising, in such manner and at such times sufficiently in advance of opening bids, as the Corporation shall determine to be adequate to insure notice and an opportunity for competition: Provided, That advertising shall not be required when the Corporation determines that the making of any such purchase or contract without advertising is necessary in the interest of furthering the purposes of this title, or that advertising is not reasonably practicable;

g. with the consent of the agency or government concerned, may utilize or employ the services or personnel of any Federal Government agency, or any State or local government, or voluntary or uncompensated personnel to perform such functions on its behalf as may appear desirable;

h. may enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its business and on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, territory or possession, or with any political subdivision thereof, or with any person, firm, association, or corporation;

i. may determine the character of and the necessity of its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of this title and other provisions of law specifically applicable to wholly-owned Government corporations;

j. notwithstanding any other provision of law, and without need for further appropriation, may use monies, unexpended appropriations, revenues and receipts from operations, amounts received from obligations issued and other assets of the Corporation in accordance with section 1505, without fiscal year limitation, for the payment of expenses and other obligations incurred by the Corporation in carrying out its functions under, and within the requirements of, this title; and shall not be subject to apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code.

k. may settle and adjust claims held by the Corporation against other persons or parties and claims by other persons or parties against the Corporation;

l. may exercise, in the name of the United States, the power of eminent domain for the furtherance of the official purposes of the Corporation;

m. shall have the priority of the United States with respect to the payment of debts out of bankrupt, insolvent, and decedents estates;

n. may define appropriate information as "Government Commercial Information" and exempt such information from mandatory release pursuant to 5 U.S.C. 552(b)(3) when it is determined by the Administrator that such information if publicly released would harm the Corporation's legitimate commercial interests or those of a third party;

o. may request, and the Administrator of General Services, when requested, shall furnish the Corporation such services as he is authorized to provide agencies of the United States;

p. may accept gifts or donations of services, or of property, real, personal, mixed, tangible or intangible, in aid of any purposes herein authorized; and

q. may execute, in accordance with its bylaws, rules and regulations, all instruments necessary and appropriate in the exercise of any of its powers.

r. shall pay any settlement or judgment entered against it from the Corporation's own funds and not from the judgment fund (31 U.S.C. 1304). The provisions of the Federal Tort Claims Act (28 U.S.C. 1346(b) and 2671 et seq.) shall not apply to any claims arising from the activities of the Corporation to any claims arising from the activities of the Corporation after the effective date of this statute; Provided, That this subsection shall not apply to liability or claims arising from a nuclear incident, if such incident occurs prior to the licensing of the Corporation's existing Gaseous Diffusion Facilities under Section 1601 of this title.

SEC. 1403. CONTINUATION OF CONTRACTS, ORDERS, PROCEEDINGS AND REGULATIONS.—

a. Except as provided elsewhere in this title, all contracts, agreements, and leases with the Department, and licenses and privileges that have been afforded to the Department prior to the date of the enactment of this title and that relate to uranium enrichment, including all enrichment services contracts, power purchase contracts and the December 18, 1987 Settlement Agreement with the Tennessee Valley Authority regarding payment of capacity charges under

the Department's two power contracts with the Tennessee Valley Authority, shall continue in effect as if the Corporation had executed such contracts, agreements, or leases or had been afforded such licenses and privileges.

b. As related to the functions vested in the Corporation by this title, all orders, determinations, rules, regulations and privileges of the Department shall continue in effect and remain applicable to the Corporation until modified, terminated, superseded, set aside or revoked by the Corporation, by any court of competent jurisdiction, or by operation of law unless otherwise specifically provided in this title.

c. Except as provided in section 1404, the transfer of functions related to and vested in the Corporation by this title shall not affect proceedings judicial or otherwise, relating to such functions which are pending at the time this title takes effect, and such proceedings shall be continued with the Corporation, as appropriate.

SEC. 1404. LIABILITIES.—

Except as provided elsewhere in this title, all liabilities attributable to operation of the uranium enrichment enterprise prior to the date of the enactment of this title remain direct liabilities of the Government of the United States; with regard to any claim seeking to impose such liability, Section 1403 shall not be applicable and the United States shall be represented by the Department of Justice.

CHAPTER 25. ORGANIZATION, FINANCE AND MANAGEMENT

SEC. 1501. ADMINISTRATOR.—

a. The management of the Corporation shall be vested in an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation. The Administrator shall be a person who, by reason of professional background and experience is specially qualified to manage the Corporation; Provided, however, That upon enactment of this title, the President shall appoint an existing officer or employee of the United States to act as Administrator until the office is filled.

b. The Administrator—

(1) shall be the chief executive officer of the Corporation and shall be responsible for the management and direction of the Corporation. The Administrator shall establish the offices, appoint the officers and employees of the Corporation (including attorneys), and define their responsibilities and duties. The Administrator shall appoint other officers and employees as may be required to conduct the Corporation's business;

(2) shall serve a term of six years but may be reappointed;

(3) shall, before taking office, take an oath to faithfully discharge the duties thereof;

(4) shall have compensation determined by the President based upon the recommendation of the Secretary and the Corporate Board as provided in section 1503d, except that the absence of such determination compensation shall be set at Executive Level I, as prescribe in 5 U.S.C. 5312;

(5) shall be a citizen of the United States;

(6) shall designate an officer of the Corporation who shall be vested with the authority to act in the capacity of the Administrator in the event of absence or incapacity; and

(7) may be removed from office only by the President and only for neglect of duty or malfeasance in office. The President shall communicate the reasons for any such removal to both Houses of Congress at least 30 days prior to the effective date of such removal.

c. (1) The Secretary shall exercise general supervision over the Administrator only with respect to the activities of the Corporation involving—

(A) the Nation's common defense and security; and

(B) health, safety and the environment.

(2) The Administrator shall be solely responsible for the exercise of all powers and responsibilities that are committed to the Administrator under this title and that are not reserved to the Secretary under paragraph (1), and, notwithstanding the provisions of 31 U.S.C. 9104(a)(4), including the setting of the appropriate amount of, and paying, any dividend under section 1506(c) and all other fiscal matters.

SEC. 1502. DELEGATION.—

The Administrator may delegate to other officers or employees powers and duties assigned to the Corporation in order to achieve the purposes of this title.

SEC. 1503. CORPORATE BOARD.—

a. There is hereby established a Corporate Board appointed by the President which shall consist of five members, one of whom shall be designated as chairman. Members of the Corporate Board shall be individuals possessing high integrity, demonstrated accomplishment and broad experience in management and shall have strong backgrounds in science, engineering, business and finance. At least one member of the Corporate Board shall be, or previously have been, employed on a full-time basis in managing an electric utility:

b. (1) The specific responsibilities of the Corporate Board shall be to:

(A) review the Corporation's policies and performance and advise the Administrator and the Secretary on these matters; and

(B) advise the Administrator and the Secretary on any other such matters concerning the Corporation as may be referred to the Corporate Board.

(2) The Board shall have the right to recommend removal of the Administrator. In the event such recommendation is made, it shall be transmitted to the President by the Secretary, together with the Secretary's own recommendation on removal of the Administrator.

c. Members of the Board shall be provided access to all significant reports, memoranda, or other written communications generated or received by the Corporation. At the request of the Board, the Corporation shall make available to the Board all financial records, reports, files, papers and memoranda of, or in use by, the Corporation.

d. When appropriate, the Corporate Board may make recommendations to the Secretary concerning the compensation to be received by the Administrator and the ten officers of the Corporation who may receive compensation in excess of Executive Level II as provided

in section 1504. b. The Secretary shall transmit such recommendations to the President together with the Secretary's own recommendations concerning compensation. In the event that less than three members of the Corporate Board are in office, recommendations concerning compensation may be made by the Secretary alone. The President shall have the power to enter into binding agreements concerning compensation to be received by the Administrator during his term of office and by the ten officers described in section 1504b. during their term of employment, regardless of any recommendation received or not received under this title.

e. Except for initial appointments, members of the Corporate Board shall serve five-year terms. Each member of the Corporate Board shall be a citizen of the United States. No more than three members of the Board shall be members of any one political party. Of those first appointed, the chairman shall serve for the full five-year term; one member shall serve for a term of four years; one shall serve for a term of three years; one shall serve for a term of two years; and one shall serve for a term of one year.

f. Upon expiration of the initial term, each Corporate Board member appointed thereafter shall serve a term of five years. Upon the occurrence of a vacancy on the Board, the President shall appoint an individual to fill such vacancy for the remainder of the applicable term. Upon expiration of a term, a Board member may continue to serve up to a maximum of one year or until a successor shall have been appointed and assumed office, whichever occurs first.

g. The members of the Corporate Board in executing their duties shall be governed by the laws and regulations regarding conflicts of interest, but exempted from other provisions and authority prescribed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2).

h. The Corporate Board shall meet at any time pursuant to the call of the Chairman and as provided by the bylaws of the Corporation, but not less than quarterly. The Administrator or his representative shall attend all meetings of the Corporate Board.

i. The Corporation shall compensate members of the Corporate Board at a per diem rate equivalent to Executive Level III, as defined in 5 U.S.C. 5314, in addition to reimbursement of reasonable expenses incurred when engaged in the performance of duties vested in the Corporate Board. Any Corporate Board member who is otherwise a Federal employee shall not be eligible for compensation above reimbursement for reasonable expenses incurred while attending of ficial meetings of the Corporation.

j. (1) The Corporate Board shall report at least annually to the Administrator on the performance of the Corporation and the issues that, in the opinion of the Board, require the attention of the Administrator. Any such report shall include such recommendations as the Board finds appropriate. A copy of any report under this subsection shall be transmitted promptly to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate and to the Speaker of the House of Representatives.

(2) Within 90 days after the receipt of any report under this subsection the Administrator shall respond in writing to such report and provide an analysis of such recommendations of the Board con-

tained in the report. Such response shall include plans for implementation of each recommendation or a justification for not implementing such recommendation. A copy of any response under this subsection shall be transmitted promptly to the President, the Secretary, the Committee on Energy and Natural Resources and to the Speaker of the House of Representatives.

SEC. 1504. EMPLOYEES OF THE CORPORATION.—

a. Officers and employees of the Corporation shall be officers and employees of the United States.

b. The Administrator shall appoint all officers, employees and agents of the Corporation as are deemed necessary to effect the provisions of this title without regard to any administratively imposed limits on personnel, and any such officer, employee or agent shall only be subject to the supervision of the Administrator. The Administrator shall fix all compensation in accordance with the comparable pay provisions of 5 U.S.C. 5301, with compensation levels not to exceed Executive Level II, as defined in 5 U.S.C. 5313; Provided, that the Administrator may, upon recommendation by the Secretary and the Corporate Board as provided in section 1503d. and approval by the President, appoint up to ten officers whose compensation shall not exceed an amount which is twenty percent less than the compensation received by the Administrator, but not less than Executive Level II. The Administrator shall define the duties of all officers and employees and provide a system of organization inclusive of a personnel management system to fix responsibilities and promote efficiency. The Corporation shall assure that the personnel function and organization is consistent with the principles of 5 U.S.C. 2301(b) relating to merit system principles. Officers and employees of the Corporation shall be appointed, promoted and assigned on the basis of merit and fitness, and other personnel actions shall be consistent with the principles of fairness and due process but without regard to those provisions of title 5 of the United States Code governing appointments and other personnel actions in the competitive service.

c. Any Federal employee hired before January 1, 1984, who transfers to the Corporation and who on the day before the date of transfer is subject to the Federal Civil Service Retirement System (subchapter III of chapter 83 of title 5, United States Code) shall remain within the coverage of such system unless he or she elects to be subject to the Federal Employees' Retirement System. For those employees remaining in the Federal Civil Service Retirement System, the Corporation shall withhold pay and shall pay into the Civil Service Retirement and Disability Fund the amounts specified in chapter 83 of title 5, United States Code. Employment by the Corporation without a break in continuity of service shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of title 5, United States Code. Any employee of the Corporation who is not within the coverage of the Federal Civil Service Retirement System shall be subject to the Federal Employees' Retirement System (chapter 84 of title 5, United States Code). The Corporation shall withhold pay and make such payments as are required under that retirement system. Further:

(1) Any employee who transfers to the Corporation under this section shall not be entitled to lump sum payments for unused annual leave under 5 U.S.C. 5551, but shall be credited by the

Corporation with the unused annual leave at the time of transfer.

(2) An employee who does not transfer to the Corporation and who does not otherwise remain a Federal employee shall be entitled to all the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Corporation of work substantially similar to that performed by the employee for the Department.

d. This section does not affect a right or remedy of an officer, employee, or applicant for employment under a law prohibiting discrimination in employment in the government on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicap conditions.

e. Officers and employees of the Corporation shall be covered by chapter 73 of title 5, United States Code, relating to suitability, security and conduct.

f. Compensation, benefits, and other terms and conditions of employment in effect immediately prior to the effective date of this section, whether provided by statute or by rules and regulations of the Department or the executive branch of the Government of the United States shall continue to apply to officers and employees who transfer to the Corporation from other Federal employment until changed by the Corporation in accordance with the provisions of this title.

g. The provisions of sections 3323(a) and 8344 of title 5, United States Code, or any other law prohibiting or limiting the reemployment of retired officers or employees or the simultaneous receipt of compensation and retired pay or annuities, shall not apply to officers and employees of the Corporation who have retired from or ceased previous government service prior to April 28, 1987.

SEC. 1505. TRANSFER OF PROPERTY TO THE CORPORATION.

a. The Secretary, as requested by the Administrator, is authorized and directed to transfer without charge to the Corporation all of the Department's right, title, or interest in and to, real or personal properties owned by the Department, or the United States but under control or custody of the Department, which are related to and materially useful in the performance of the functions transferred by this title, including but not limited to the following:

(1) production facilities for uranium enrichment inclusive of real estate, buildings and other improvements at production sites and their related and supporting equipment; Provided, that facilities, real estate, improvements and equipment related to the Oak Ridge Gaseous Diffusion plant in Oak Ridge, Tennessee, and to the gas centrifuge enrichment program shall not transfer under this paragraph except for diffusion cascades and related equipment needed by the Corporation for replacement parts; provided further that any enrichment facilities retained by the Department shall not be used to enrich uranium in competition with the Corporation. This paragraph shall not prejudice consideration of any site as a candidate site for future expansion or replacement of uranium enrichment capacity.

(2) at such time subsequent to the year 2000 as the Secretary determines that the Oak Ridge Gaseous Diffusion Plant should

be decommissioned or decontaminated, or both, the Secretary shall convey without charge equipment and facilities relating to the Oak Ridge Gaseous Diffusion Plant not transferred in paragraph (1) to the Corporation.

(3) facilities, equipment, and materials for research and development activities related to the isotopic separation of uranium by the gaseous diffusion technology.

(4) The Department's stocks of preproduced enriched uranium, but excluding stocks of highly enriched uranium; Provided, that approximately 2 metric tons of the Department's highly enriched uranium shall be loaned to the Corporation as required for working inventory.

(5) the Department's stocks of feed materials for uranium enrichment except for the quantities allocated to the national defense activities of the Department as of the date of enactment.

(A) the Department's stockpile of enrichment tails existing as of the date of enactment, shall remain with the Department.

(B) Stocks of feed materials which remain the property of the Department under paragraph (5) shall remain in place at the enrichment plant sites. The Corporation shall have access to and use of these feed materials provided such quantities as are used are replaced, or credit given, if use by the Department is subsequently needed.

(6) all other facilities, equipment, materials, processes, patents, technical information of any kind, contracts, agreements, and leases to the extent these items concern the Corporation's functions and activities, except those items required for programs and activities of the Department and those items specifically excluded by this subsection.

The transfer authorized by this section is not subject to the requirements of section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act.

b. The Secretary is authorized and directed to grant to the Corporation without charge the Department's rights and access to the Atomic Vapor Laser Isotope Separation, hereinafter referred to as "AVLIS", technology and to provide on a reimbursable basis and at the request of the Corporation, the necessary cooperation and support of the Department to assure the commercial development and deployment of AVLIS or other technologies in a manner consistent with the intent of this title.

c. The Secretary is authorized and directed to grant the Corporation without charge, to the extent necessary or appropriate for the conduct of the Corporation's activities, licenses to practice or have practiced any inventions or discoveries (whether patented or unpatented) together with the right to use or have used any processes and technical information owned or controlled by the Department.

d. The Secretary is directed, without need of further appropriation, to transfer to the Corporation the unexpended balance of appropriations and other monies available to the Department (inclusive of funds set aside for accounts payable), and accounts receivable which are related to functions and activities acquired by the Corporation from the Department pursuant to this title, including all advance payments.

e. The President is authorized to provide for the transfer to the Corporation of the use, possession, and control of such other real and personal property of the United States which is reasonably related to the functions performed by the Corporation. Such transfers may be made by the President without charge as he may from time to time deem necessary and proper for achieving the purposes of this title.

f. Title to depleted uranium resulting from the enrichment services provided to the Department by the Corporation shall remain with the Department.

SEC. 1506. CAPITAL STRUCTURE OF THE CORPORATION.—

a. Upon commencement of operations of the Corporation, all liabilities then chargeable to unexpended balances of appropriations transferred under section 1505 shall become liabilities of the Corporation.

b. (1) The Corporation shall issue capital stock representing an equity investment equal to the book value of assets transferred to the Corporation, as reported in the Uranium Enrichment Annual Report for fiscal year 1987, modified to reflect continued depreciation and other usual changes that occur up to the date of transfer. The Secretary of the Treasury shall hold such stock for the United States; Provided, that all rights and duties pertaining to management of the Corporation shall remain vested in the Administrator as specified in section 1501.

(2) The capital stock of the Corporation shall not be sold, transferred, or conveyed by the United States unless such disposition is specifically authorized by Federal law enacted after enactment of this title.

c. The Corporation shall pay into miscellaneous receipts of the Treasury of the United States or such other fund as provided by law, dividends on the capital stock, out of earnings of the Corporation, as a return on the investment represented by such stock. The Corporation shall pay such dividends out of earnings, unless there is an overriding need to retain these funds in furtherance of other corporate functions including but not limited to research and development, capital investments and establishment of cash reserves.

d. The Corporation shall repay within a 20-year period the amount of \$364,000,000 into miscellaneous receipts of the Treasury of the United States, or such other fund as provided by law with interest on the unpaid balance from the date of enactment of this title at a rate equal to the average yield on 20-year Government obligations as determined by the Secretary of the Treasury on the date of enactment of this title. The money required to be repaid under this subsection is hereinafter referred to as the 'Initial Debt'.

e. Receipt by the United States of the stock issued by the Corporation (including all rights appurtenant thereto) together with repayment of the Initial Debt shall constitute the sole recovery by the United States of previously unrecovered costs that have been incurred by the United States for uranium enrichment activities prior to enactment of this title.

SEC. 1507. BORROWING.—

a. (1) The Corporation is authorized to issue and sell bonds, notes, and other evidences of indebtedness (hereinafter collectively referred to as "bonds") in an amount not exceeding \$2,500,000,000 outstand-

ing at any one time to assist in financing its activities and to refund such bonds. The principal of and interest on said bonds shall be payable from revenues of the Corporation.

(2) Notwithstanding any other provision of law, the Corporation may pledge and use its revenues for payment of the principal of and interest on said bonds, for purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve funds and other funds which may be similarly pledged and used, to such extent and in such manner as it may deem necessary or desirable.

(3) Notwithstanding any other provision of law, the Corporation is authorized to enter into binding covenants with the holders of said bonds—and with the trustee, if any—under any indenture, resolution, or other agreement entered into in connection with the issuance thereof with respect to the establishment of reserve funds and other funds, stipulations concerning the subsequent issuance of bonds, and such other matters, not inconsistent with this title, as the Corporation may deem necessary or desirable to enhance the marketability of said bonds.

(4) Bonds issued by the Corporation hereunder shall not be obligations of, nor shall payments of the principal thereof or interest thereon be guaranteed by, the United States.

b. Bonds issued by the Corporation under this section shall be negotiable instruments unless otherwise specified therein, shall be in such forms and denominations, shall be sold at such times and in such amounts, shall mature at such time or times not more than thirty years from their respective dates, shall be sold at such prices, shall bear such rates of interest, may be redeemable before maturity at the option of the Corporation in such manner and at such times and redemption premiums, may be entitled to such priorities of claim on the Corporation's revenues with respect to principal and interest payments, and shall be subject to such other terms and conditions, as the Corporation may determine; Provided, that at least fifteen days before selling each issue of bonds hereunder (exclusive of any commitment shorter than one year) the Corporation shall advise the Secretary of the Treasury as to the amount, proposed date of sale, maturities, terms and conditions and expected rates of interest of the proposed issue in the fullest detail possible. The Corporation shall not be subject to the provisions of section 9108 of title 31, United States Code. The Corporation shall be deemed part of an executive department or an independent establishment of the United States for the purposes of the provisions of 15 U.S.C. 78c(c).

c. Bonds issued by the Corporation hereunder shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the United States. The Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the bonds of the Corporation acquired by them under this section; Provided, that the Corporation shall not issue or sell any bonds to the Federal Financing Bank.

SEC. 1508. PRICING.—

a. For purposes of maximizing the long term economic value of the Corporation to the United States Government, the Corporation shall establish prices for its products, materials and services provided to customers other than the Department on a basis that will, over the long term, allow it to recover its costs for providing the products, materials and services; repay the initial debt; recover costs of decontamination, decommissioning and remedial action; and attain the normal business objectives of a profit-making Corporation.

b. The Corporation shall establish prices for low assay enrichment services and other products, materials, and services provided the Department on a basis that will allow it to recover its costs on a yearly basis for providing such low assay enrichment services, products, materials and services, including depreciation and the cost of decontamination, decommissioning and remedial action, but excluding repayment of the Initial Debt and profit. In establishing such prices, the base charge paid by the Department in any given year shall not exceed the average base charge paid by customers other than the Department: Provided, however, that if the imposition of such average base charges as a limitation on the base charge paid by the Department in a given year does not permit the Corporation to fully recover its costs for providing such products, materials and services to the Department then, in subsequent years, the Corporation shall include such unrecovered costs in its prices charged the Department. Base charge shall mean the amount paid by a customer per separate work unit for low assay enrichment services during a given year (exclusive of any credits received under a voluntary overfeeding program), less the portion of such amount which represents the cost of decontamination and decommissioning and remedial action. The average base charge paid by customers other than the Department shall be determined by dividing the estimated total dollar amount of low assay enrichment services sales to customers other than the Department during a given year by the estimated amount of separate work units sold to customers other than the Department during that year. Adjustments between estimated and actual amounts shall be made upon receipt of actual sales data.

c. The Corporation shall establish prices to the Department for high assay enrichment services on a basis that will allow it to recover its costs, on a yearly basis, for providing the products materials or services, including depreciation and the costs of decontamination, decommissioning, and remedial action concerning enrichment property, but excluding repayment of the initial debt and profit. If the Department does not request any enrichment services in a given year, the Department shall reimburse the Corporation for costs required to maintain the minimum level of operation of the high assay production facility.

d. (1) In accordance with the cost responsibilities defined in paragraphs (3) and (4), the Corporation shall recover from its customers in the prices and charges established in accordance with subsection a., amounts that will be sufficient to pay for the costs of decommissioning, decontamination and remedial action for the various property of the Corporation, including property transferred under section 1505a. at any time. Such costs shall be based on the point in time that such decommissioning, decontamination and remedial action are to be undertaken and accomplished; provided, that by the year

2000 the Corporation shall have recovered and deposited in the Uranium Enrichment Decontamination and Decommissioning Fund fifty percent of the estimated total costs of decontamination and decommissioning of all property transferred or to be transferred to the Corporation under section 1505, including the Oak Ridge Gaseous Diffusion Plant.

(2) In order to meet the objective defined in paragraph (1), the Corporation shall periodically estimate the anticipated or actual costs of decommissioning and decontamination. Such estimates shall reflect any changes in assumptions or expectations relevant to meeting such objective, including, but not limited to, any changes in applicable environmental requirements. Such estimates shall be reviewed at least every two years.

(3) For purpose of enabling the Corporation to meet the objective defined in paragraph (1) with respect to the Oak Ridge Gaseous Diffusion Plant, the Secretary shall periodically estimate the anticipated costs of decontamination and decommissioning and the time at which such decontamination and decommissioning is to be accomplished. Such estimates shall reflect any changes in assumptions or expectations relevant to meeting such objective, including but not limited to, any changes in applicable environmental requirements. The Secretary shall review such estimates every two years and convey this information to the Corporation.

(4) With respect to property that has been used in the production of low-assay separative work.

(A) The cost of decommissioning, decontamination and remedial action that shall be recoverable from customers other than the Department in prices and charges shall be in the same ratio to the total costs of decommissioning, decontamination and remedial action for the property in question as the production of separative work over the life of such property for commercial customers bears to the total production of separative work over the life of such property.

(B) All other costs of decommissioning, decontamination and remedial action for such property shall be recovered in prices and charges to the Department.

(5) With respect to property that has been used solely in the production of high-assay separative work, all costs of decommissioning, decontamination and remedial action shall be recovered in prices and charges to the Department.

SEC. 1509. AUDITS.—In fiscal years during which an audit is not performed by the Comptroller General in accordance with the provisions of 31 U.S.C. 9105, the financial transactions of the Corporation shall be audited by an independent firm or firms of nationally recognized certified public accountants who shall prepare such audits using standards appropriate for commercial corporate transactions. The fiscal year of the Corporation shall conform to the fiscal year of the United States. The General Accounting Office shall review such audits annually, and to the extent necessary, cause there to be a further examination by the Corporation using standards for commercial corporate transactions. Such audits shall be conducted at the place or places where the accounts of the Corporation are established and maintained. All books, financial records, files, papers, memoranda, and other property of, or in use by, the

Corporation shall be made available to the person or persons authorized to conduct audits in accordance with the provisions of this section.

SEC. 1510. REPORTS.—

a. The Corporation shall prepare an annual report of its activities. This report shall contain:

- (1) A general description of the Corporation's operations;
- (2) A summary of the Corporation's operating and financial performance, including an explanation of the decision to pay or not pay dividends; and
- (3) Copies of audit reports prepared in conformance with section 1509 of this title and the provisions of the Government Corporation Control Act, as amended.

b. A copy of the annual report shall be provided to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate, and the appropriate committees of the House of Representatives. Such reports shall be completed not later than 90 days following the close of each fiscal year and shall accurately reflect the financial position of the Corporation at fiscal year end, inclusive of any impairment of capital or ability of the Corporation to comply with the provisions of this title.

SEC. 1511. CONTROL OF INFORMATION.—

a. The term "Commission" shall be deemed to include the Corporation wherever such terms appears in section 141 and subsections a. and b. of section 142 of title I.

b. No contracts or arrangements shall be made, nor any contract continued in effect, under Section 1401, 1402, 1403, or 1404, unless the person with whom such contract or arrangement is made, or the contractor or prospective contractor, agrees in writing not to permit any individual to have access to Restricted Data, as defined in section 11 y. of title I, until the Office of Personnel Management shall have made an investigation and report to the Corporation on the character, associations, and loyalty of such individual, and the Corporation shall have determined that permitting such person to have access to Restricted Data will not endanger the common defenses and security.

c. The restrictions detailed in subsections b., c., d., e., f., g., and h., of section 145 of title I shall be deemed to apply to the Corporation where they refer to the Commission or a majority of the members of the Commission, and to the Administrator where they refer to the General Manager.

d. The Administrator shall keep the appropriate congressional committees fully and currently informed with respect to all of the Corporation's activities. To the extent consistent with the other provisions of this section, the Corporation shall make available to any of such committees all books, financial records, reports, files, papers, memoranda, or other information possessed by the Corporation upon receiving or request for such information from the chairman of such committee.

e. Whenever the Corporation submits to the President, or the Office of Management and Budget, any budget, legislative recommendation, testimony, or comments on legislation, prepared for submission to the Congress, the Corporation shall concurrently transmit a copy thereof of the appropriate committees of Congress.

f. The Corporation shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.

SEC. 1512. PATENTS AND INVENTIONS.—

a. The term "Commission's" shall be deemed to include the Corporation wherever such term appears in section 152 or 153b.(1), of title I. The Corporation shall pay such royalty fees for patents licensed to it under section 153b.(1) of title I as are paid by the Department under that provision. Nothing in title I or this title shall affect the right of the Corporation to require that patents granted on inventions, that have been conceived or first reduced to practice during the course of research or operations of, or financed by the Corporation, be assigned to the Corporation.

b. The Department shall notify the Corporation of all reports heretofore or hereafter filed with it under subsection 151c. of title I and all applications for patents heretofore or hereafter filed with the Commissioner of Patents of which the Department has notice under subsection 151d. of title I or otherwise, whenever such reports or applications involve matters pertaining to the functions or responsibilities of the Corporation in accordance with this title. The Department shall make all such reports available to the Corporation, and the Commissioner of Patents shall provide the Corporation access to all such applications. All reports and applications to which access is so provided shall be kept in confidence by the Corporation, and no information concerning the same given without authority of the inventor or owner unless necessary to carry out the provisions of any Act of Congress.

c. The Corporation, without regard for any of the conditions specified in paragraph 153c. (1), (2), (3), or (4) of title I, may at any time make application to the Department for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent when such patent has not been declared to be affected with the public interest under subsection 153b.(1) of title I and when use of such patent is within the Corporation's authority. Any such application shall constitute an application under subsection 153c. of title I subject, except as specified above, to all the provisions of subsections 153 c., d., e., f., e., and h., of title I.

d. With respect to the Corporation's functions under this title, section 158 of title I shall be deemed to include the Corporation within the phrase "any other licensee" in the first sentence thereof and within the phrase "such licensee" in the second sentence thereof.

e. The Corporation shall not be liable directly or indirectly for any damages or financial responsibility under section 183 of title 35, United States Code with respect to secrecy orders imposed under such title.

f. The Corporation shall not be liable or responsible for any payments made or awards under subsection 157 b.(3) of title I, or any settlements or judgments involving claims for alleged patent infringement except to the extent that any such awards settlements or judgment are attributable to activities of the Corporation after the effective date of this title.

g. The Corporation shall keep currently informed as to matters affecting its rights and responsibilities under chapter 13 of title I as

modified by this section and shall take all appropriate action to avail itself of such rights and satisfy such responsibilities. The Department in discharging its responsibilities under chapter 13 of titles I shall exercise diligence in informing the Corporation of matters affecting the responsibilities and jurisdiction of the Corporation and seeking and following as appropriate the advice and recommendation of the Corporation in such matters.

CHAPTER 26. LICENSING, TAXATION, AND MISCELLANEOUS PROVISIONS

SEC. 1601. LICENSING.—

a. Notwithstanding any other provision of law, with respect solely to facilities, equipment and materials for activities related to the isotopic separation of uranium by the gaseous diffusion technology at facilities in existence as of the date of enactment of this title, the Corporation and its contractors are hereby exempted from the licensing requirements and prohibitions of sections 57, 62, 81 and other provisions of title I, to the same extent as the Department and its contractors are exempt in regard to the Department's own functions and activities. Such exemption shall remain in effect unless and until the Corporation and its contractors receive all necessary licenses for such facilities, equipment and materials as are required under title I.

b. Within two years of the enactment of this title, the Commission shall promulgate regulations or issue other regulatory guidance under title I for the licensing of facilities described in subsection (a) that employ the gaseous diffusion technology.

c. Within one year after the promulgation of regulations or the issuance of other regulatory guidance under subsection (b), the Corporation and its contractors shall make necessary applications for and otherwise seek to obtain such licenses as will remove the exemption provided under subsection (a). As part of its applications, the Corporation shall submit an Environmental Impact Statement in accordance with the requirements of the National Environmental Policy Act. The Commission shall adopt this statement to the extent practicable under the National Environmental Policy Act. In preparing such statements the Corporation, and in making any licensing decision, the Commission, shall not consider the need for such facilities, alternatives to such facilities, or the costs compared to the benefits of such facilities. The Commission shall act on licensing requests by the Corporation in a timely manner.

d. The Corporation shall not transfer or deliver any source, special nuclear or byproduct materials or production or utilization facilities, as defined in title I, to any person who is not properly qualified or licensed under the provisions of title I.

e. The Corporation shall be subject to the regulatory jurisdiction of the commission and the Department of Transportation with respect to the packaging and transportation of source, special nuclear and byproduct materials.

SEC. 1602. EXEMPTION FROM TAXATION AND PAYMENTS IN LIEU OF TAXES.—

a. In order to render financial assistance to those states and localities in which the facilities of the Corporation are located, the Cor-

poration is authorized and directed beginning in fiscal year 1997 to make payments to state and local governments as provided in this section. Such payments shall be in lieu of any and all state and local taxes on the real and personal property, activities and income of the Corporation. All property of the Corporation, its activities, and income are expressly exempted from taxation in any manner or form by any state, county, or other local government entity. The activities of the Corporation for this purpose shall include the activities of organizations pursuant to cost-type contracts with the Corporation to manage, operate and maintain its facilities. The income of the Corporation shall include income received by such organizations for the account of the Corporation. The income of the Corporation shall not include income received by such organizations for their own accounts, and such income shall not be exempt from taxation.

b. Beginning in fiscal year 1997, the Corporation shall make annual payments, in amounts determined by the Corporation to be fair and reasonable, to the state and local governmental agencies having tax jurisdiction in any area where facilities of the Corporation are located. In making such determinations, the Corporation shall be guided by the following criteria:

(1) Amounts paid shall not exceed the tax payments that would be made by a private industrial corporation owning similar facilities and engaged in similar activities at the same location; Provided, however, That there shall be excluded any amount that would be payable as a tax on net income.

(2) The Corporation shall take into account the customs and practices prevailing in the area with respect to appraisal, assessment, and classification of industrial property and any special considerations extended to large-scale industrial operations.

(3) No amount shall be included to the extent that any tax unfairly discriminates against the class of taxpayers of which the Corporation would be a member if it were a private industrial corporation, compared with other taxpayers or classes of taxpayers.

(4) Following the commencement of payments in fiscal year 1997, no payment made to any taxing authority for any period shall be less than the payments which would have been made to such taxing authority for the same period by the Department and its cost-type contractors on behalf of the Department with respect to property that has been transferred to the Corporation under section 1505 and which would have been attributable to the ownership, management operation, and maintenance of the Department's uranium enrichment facilities, applying the laws and policies prevailing immediately to the enactment of this title.

c. Payments shall be made by the Corporation at the time when payments of taxes by taxpayers to each taxing authority are due and payable; Provided, that no payment shall be made to the extent that the tax would apply to a period prior to fiscal year 1997.

d. The determination by the Corporation of the amounts due hereunder shall be final and conclusive.

SEC. 1603. MISCELLANEOUS APPLICABILITY OF TITLE I.—

a. Any references to the term "Commission" or to the Department in sections 105 b., 161 c., 161 k., 161 q., 165 a., 221 a., 229, 230 and 232 of title I shall be deemed to include the Corporation.

b. Section 188 of title I shall apply to licensed facilities of the Corporation. For purposes of applying such section to facilities of the Corporation:

(1) The term "Commission" shall be deemed to refer to the Secretary;

(2) There shall be no requirement for payment of just compensation to the Corporation, and receipts from operation of the facility in question shall continue to accrue to the benefit of the Corporation; and

(3) The Secretary shall have the discretion to determine how and by whom the facility in question will be operated.

SEC. 1604. COOPERATION WITH OTHER AGENCIES.—

The Corporation is empowered to use with their consent the available services, equipment, personnel, and facilities of other civilian or military agencies and instrumentalities of the Federal Government, on a reimbursable basis and on a similar basis to cooperate with such other agencies and instrumentalities in the establishment and use of services, equipment, and facilities of the Corporation. Further, the Corporation may confer with and avail itself of the cooperation, services, records, and facilities of state, territorial, municipal or other local agencies.

SEC. 1605. APPLICABILITY OF ANTITRUST LAWS.—

a. The Corporation shall conduct its activities in a manner consistent with the policies expressed in the antitrust laws, except as required by the public interest.

b. As used in this subsection, the term "antitrust laws" means:

(1) The Act entitled: "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (15 U.S.C. 1-7), as amended;

(2) The Act entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (15 U.S.C. 12-27), as amended;

(3) Sections 73 and 74 of the Act entitled, "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; and

(4) The Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

SEC. 1606. NUCLEAR HAZARD INDEMNIFICATION.—

The Administrator shall have the same authority to indemnify the contractors of the Corporation as the Secretary has to indemnify contractors under section 170 d. of title I. Except that with respect to any licenses issued to the Corporation by the Commission, the Commission shall treat the Corporation and its contractors as its licensees for the purposes of Section 170 of this Act.

SEC. 1607. Intent.—

It is hereby declared to be the intent of this title to aid the Corporation in discharging its responsibilities under this title by providing it with adequate authority and administrative flexibility to assure the maximum achievement of the purposes hereof as provided

herein, and this title shall be construed liberally to effectuate such intent.

SEC. 1608. REPORT.—

a. Three years after enactment of this title, the Administrator shall submit to the President and to Congress an interim report setting forth the views and recommendations of the Administrator regarding transfer of the functions, powers, duties, and assets of the Corporation to private ownership. Five years after enactment of this title, the Administrator shall submit to the President and the Congress a final report setting forth the views and recommendations of the Administrator regarding transfer of the functions, powers, duties, and assets of the Corporation to private ownership. If the Administrator, in the final report, recommends such transfers, the report shall include a plan for implementation of the transfers.

b. Within 180 days after receipt of the final report under subsection (a), the President shall transmit to Congress his recommendations regarding the report, including a plan for implementation of any transfers recommended by the President and any recommendations for legislation necessary to effectuate such transfers.

CHAPTER 27. DECONTAMINATION AND DECOMMISSIONING

SEC. 1701. ESTABLISHMENT.—

a. ESTABLISHMENT OF FUND.—

(1) There is hereby established in the Treasury of the United States an account of the Corporation to be known as the Uranium Enrichment Decontamination and Decommissioning Fund (hereinafter referred to in this chapter as the "Fund"). In accordance with section 1402(j), such account and any funds deposited therein, shall be available to the Corporation for the exclusive purpose of carrying out the purposes of this chapter.

(2) The Fund shall consist of:

(A) Amounts paid into it by the Corporation in accordance with section 1702; and

(B) Any interest earned under subsection (b)(2).

b. ADMINISTRATION OF FUND.—

(1) The Secretary of the Treasury shall hold the Fund and, after consultation with the Corporation, annually report to the Congress on the financial condition and operations of the Fund during the preceding fiscal year.

(2) At the direction of the Corporation, the Secretary of the Treasury shall invest amounts contained within such Fund in obligations of the United States:

(A) Having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Fund, as determined by the Corporation; and

(B) Bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to such obligations.

(3) At the request of the Corporation, the Secretary of the Treasury shall sell such obligations and credit the proceeds to the Fund.

SEC. 1702. DEPOSITS.—

Within 60 days of the end of each fiscal year, the Corporation shall make a payment into the Fund in an amount equal to the costs of decontamination and decommissioning that have been recovered during such fiscal year by the Corporation in its prices and charges established in accordance with section 1508 for products, materials, and services.

SEC. 1703. PERFORMANCE AND DISBURSEMENTS.—

a. When the Corporation determines that particular property should be decommissioned or decontaminated, or both, or with respect to the Oak Ridge Gaseous Diffusion Plant at such time as the plant is conveyed to the Corporation, the Corporation shall enter into a contract for the performance of such decommissioning and decontamination.

b. The Corporation shall pay for the costs of such decommissioning and decontamination out of amounts contained within the Fund.

JOINT RESOLUTION Making further continuing appropriations for the fiscal year 1988, and for other purposes

[Public Law 100-202]

* * * * *

AN ACT MAKING APPROPRIATIONS FOR ENERGY AND WATER DEVELOPMENT FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1988, AND FOR OTHER PURPOSES

* * * * *

TITLE III**DEPARTMENT OF ENERGY**

* * * * *

[Sec. 306. No funds appropriated or made available under this or any other Act shall be used by the executive branch for studies, reviews, to solicit proposals, to consider unsolicited proposals, undertake any initiative or draft any proposals to transfer out of Federal ownership, management or control in whole or in part, the facilities, assets, and functions of the uranium supply and enrichment programs, including inventories, until such activities have been specifically authorized in accordance with terms and conditions established by an Act of Congress hereafter enacted; *Provided*. That this provision shall not apply to the authority granted to the Department of Energy under section 161g of the Atomic Energy Act of 1954, as amended, under which it may sell, lease, grant, and dispose of property in furtherance of Atomic Energy Act activities of to the authority of the Administrator of the General Services Administration pursuant to the Federal Property and Administrative Service Act of 1944 to sell or otherwise dispose of surplus property.**]**

* * * * *

BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

[Public Law 99-177]

§ 905. Exempt programs and activities

(a) **SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS.**—Increases in benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act [42 U.S.C.A. § 401 et seq.], or in benefits payable under section 3(a), 3(f)(3), or 4(f) of the Railroad Retirement Act of 1954 [45 U.S.C.A. §§ 231b(a), 231(f)(3), 231c(a), and 231e(f)], shall not be considered "automatic spending increases" for purposes of this title, and no reduction in any such increase or in any of the benefits involved shall be made under any order issued under this subchapter.

(b) **VETERANS PROGRAMS.**—The following programs shall be exempt from reduction under any order issued under this subchapter:

Veterans' compensation (36-0153-0-1-701); and
Veterans' pensions (36-0154-0-1-701).

(c) **NET INTEREST.**—No reduction of payments for net interest (all of major functional category 900) shall be made under any order issued under this subchapter.

(d) **EARNED INCOME TAX CREDIT.**—Payments to individuals made pursuant to section 32 of the Internal Revenue Code of 1954 [26 U.S.C.A. § 32] shall be exempt from reduction under any order issued under this subchapter.

(e) **Offsetting Receipts and Collections.**—Offsetting receipts and collections shall not be reduced under any order issued under this subchapter.

(f) **CERTAIN PROGRAM BASED.**—Outlays for programs specified in paragraph (1) of section 907 of this title shall be subject to reduction only in accordance with the procedures established in section 901(a)(3)(C) and 906(b) of this title.

(g) **OTHER PROGRAMS AND ACTIVITIES.**—(1) The following budget accounts and activities shall be exempt from reduction under any order issued under this subchapter:

Activities resulting from provide donations, bequests, or voluntary contributions to the Government;

Alaska Power Administration, Operations and maintenance (89-03404-0-1-271);

Appropriations for the District of Columbia (to the extent they are appropriations of locally raised funds);

Bonneville Power Administration fund and borrowing authority established pursuant to section 13 of Public Law 93-454 (1974), as amended (89-4045-0-3-271);

Bureau of Indian Affairs miscellaneous trust funds, tribal trust funds (14-9973-0-7-999);

Claims, defense (97-0102-0-1-51)

Claims, judgments, and relief acts (20-1895-0-1-806);

Coinage profit fund (20-5811-0-2-803);

Compensation of the President (11-0001-0-1-802);

Eastern Indian land claims settlement fund (14-2202-0-1-806);

Exchange stabilization fund (20-4444-0-3-155);

Federal payment to the railroad retirement account (60-0113-0-1-601);

Foreign military sales trust fund (11-8242-0-7-155);

Health professions graduate student loan insurance fund (Health Education Assistance Loan Program) (75-4305-0-553);

Intagovernmental funds, including those from which the outlays are derived primarily from resources paid in from other government accounts, except to the extent such funds are augmented by direct appropriations for the fiscal year during which an order is in effect:

Payment of Vietnam and USS Pueblo prisoner-of-war claims (15-0104-0-1-153);

Payment to civil service retirement and disability fund (24-0200-0-1-805);

Payment to copyright owners (03-5175-0-2-376);

Payment to health care trust funds (75-0580-0-1-572);

Payments to military retirement fund (98-0040-0-1-054);

Payments to social security trust funds (75-0404-0-1-571);

Payments to state and local government fiscal assistance trust fund (20-2111-0-1-851);

Payments to the foreign service retirement and disability fund (11-1036-0-1-153 and 19-0540-0-1-153);

Payments to trust funds from excise taxes or other receipts properly creditable to such trust funds;

Postal service fund (18-4020-0-3-372);

Salaries of Article III judges;

Soldiers and Airmen's Home, payment of claims (84-8930-0-7-705);

Southeastern Power Administration, Operations and maintenance (89-0302-0-1-271);

Southwestern Power Administration, Operations and maintenance (89-0303-0-1-271);

Tennessee Valley Authority fund, except non-power programs and activities (64-4110-0-3-999);

Western Area Power Administration, Construction, rehabilitation, operations, and maintenance (89-5068-0-2-271); and

Western Area Power Administration, Colorado River basins power marketing fund (89-4452-0-3-271);

United States Enrichment Corporation.

* * * * *

an act To provide for financial control of Government corporations

[59 Stat. 597; 31 USC 9101]

* * * * *

§ 9101. Definitions

In this chapter—

- * * * * *
- (3) "wholly owned Government corporation" means—
(N) United States Enrichment Corporation
- * * * * *

SEC. 185. CONSTRUCTION PERMITS AND OPERATING LICENSES.—

a. All applicants for licenses to construct or modify production or utilization facilities shall, if the application is otherwise acceptable to the Commission, be initially granted a construction permit. The construction permit shall state the earliest and latest dates for the completion of the construction or modification. Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date. Upon the completion of the construction or modification of the facility, upon the filing of any additional information needed to bring the original application up to date, and upon finding that the facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this Act and of the rules and regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of a license would not be in accordance with the provisions of this Act, the Commission shall thereupon issue a license to the applicant. For all other purposes of this Act, a construction permit is deemed to be a "license."

b. After holding a public hearing under section 189a(1)(A) of this Act, the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall satisfy itself that the prescribed acceptance criteria are met.

SEC. 189. HEARINGS AND JUDICIAL REVIEW.—

a.(1)(A) In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with

the activities of licenses, and in any proceeding for the payment of compensation, an award or royalties under sections 153, 157, 186 c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 103 or 104 b. for a construction permit for a facility, and on any application under section 104 c. for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards considerations.

(B)(i) Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 185b., the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

(ii) A request for hearing under this subparagraph shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(iii) After receiving a request for a hearing under this subparagraph, the Commission expeditiously shall either deny or grant the request. If a hearing is held, commencement of plant operation shall not be delayed pending a decision unless the Commission determines, after considering petitioners' prima facie showing and any answers thereto, that petitioners are likely to succeed on the merits and that there will not be reasonable assurance of adequate protection of the public health and safety.

(iv) A hearing under this subparagraph shall be informal, but parties shall be allowed to offer evidence, under oath or affirmation. Discovery and cross-examination of witnesses shall not be permitted, unless the presiding official determines that discovery, cross-examination, or other procedure is necessary to the resolution of a substantial dispute of material fact.

(v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 120 days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later.

Commencement of operation under a combined license is not subject to subparagraph (A).

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license, *or any amendment to a combined construction and operating license*, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license *or any amendment to a combined construction and operating license* involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

b. Any final order entered in any proceeding of the kind specified in subsection a. above shall be subject to judicial review in the manner prescribed in the Act of December 29, 1950, as amended (ch. 1189, 64 Stat. 1129), and to the provisions of section 10 of the Administrative Procedure Act, as amended.

* * * * *

FEDERAL POWER ACT

The Act of June 10, 1920, Chapter 285

PART I

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Power Commission (hereinafter referred to as the "commission")

which shall be composed of five commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as chairman and shall be the principal executive officer of the commission: *Provided*, That after the expiration of the original term of the commissioner so designated as chairman by the President, chairmen shall be elected by the commission itself, each chairman when so elected to act as such until the expiration of his term of office.

* * * * *

SEC. 4. The Commission is hereby authorized and empowered, *and for the purposes of subsections (h) and (i), the Commission shall—*

* * * * *

(e) To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the [several States, or upon] *several States (except fresh waters in the State of Hawaii), or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: Provided*, That licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired[, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation.] *and in the case of a Government dam shall be subject to and contain such conditions as the Secretary of the department under whose supervision such Government dam falls shall deem necessary to ensure that the license will not interfere or be inconsistent with the authorized purposes for which such Government dam was created and shall not detract from all lawful obligations of the Secretary of jurisdiction, including operation and maintenance, relating to such government dams in accordance with contractual or other arrangements and in a manner which ensures the protection, preservation and safety of the public welfare: Provided further*, That licenses issued within an Indian reservation shall be subject to and contain such conditions as the Secretary of the Interior shall deem necessary for the adequate protection and utilization of such Indian reservation: *Provided further*, That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of

the Army. Whenever the contemplated improvement is, in the judgment of the Commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the Commission and shall become a part of the records of the Commission: *Provided further*, That in case the Commission shall find that any Government dam may be advantageously used by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to Congress the facts and conditions relating thereto, except that this provision shall not apply to any Government dam constructed prior to June 10, 1920: *And provided further*, That upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (f) of this section, notice shall be given and published as required by the proviso of said subsection. In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

* * * * *

(h) *Establish procedures that, to the extent practicable, provide for the earliest identification and performance of all studies and analyses required to be performed in conjunction with the submission of an application for a license under this Part.*

(i)(1) *Coordinate a single, consolidated review, including review under the National Environmental Policy Act of 1969, of a project which is the subject of an application for a license under this Part, by all Federal agencies, State agencies and affected Indian tribes interested in the project that is the subject of the application. The Commission shall give reasonable notice of the application and the consolidated review to all Federal agencies, State agencies and affected Indian tribes that may be interested in the project that is the subject of the application. The Commission shall be the lead agency for purposes of compliance with the National Environmental Policy Act of 1969. A review under the National Environmental Policy Act of 1969 completed by the Commission as part of this consolidated review shall be the only documentation needed by an agency to satisfy the requirements of the National Environmental Policy Act of 1969 for the project subject to the review. The Commission's decision concerning issuance of a license and the terms, conditions and prescriptions of the license shall take into account the results of the consolidated review. An agency's decision concerning its recommendations, terms, conditions and prescriptions for the license and any approvals within its authority related to the project shall take into account the results of the consolidated review. The Commission may establish reasonable time limits for submission of recommendations, terms, conditions, prescriptions and reports by a Federal agency, State agency or Indian tribe as part of the consolidated review. If an agency does not meet the Commission's time limitations, the*

Commission may continue to process and to take any appropriate action on the application.

(2) Where environmental documents are prepared in connection with an application for a license under this Part, the Commission shall permit, at the election of the applicant, a contractor, consultant or other person funded by the applicant to prepare such environmental document. The contractor shall be chosen by the Commission in its sole discretion. The Commission shall establish procedures to assure that the contractor, consultant or other person has no financial or other potential conflict of interest in the outcome of the proceeding. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.

SEC. 10. * * *

[(i) In issuing licenses for a minor part only of a complete project, or for a complete project of not more than two thousand horsepower installed capacity, the Commission may in its discretion waive such conditions, provisions, and requirements of this Part, except the license period of fifty years, as it may deem to be to the public interest to waive under the circumstances: *Provided*, That the provision hereof shall not apply annual charges for use of lands within Indian reservations.]

[(j)](i)(1) That in order to adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project, each license issued under this Part shall include conditions for such protection, mitigation, and enhancement. Subject to paragraph [(2)](3) such conditions shall be based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

[(2) Whenever the Commission believes that any recommendation referred to in paragraph (1) may be inconsistent with the purposes and requirements of this Part or other or other applicable law, the Commission and the agencies referred to in paragraph (1) shall attempt to resolve any such inconsistency, given due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If, after such attempt, the Commission does not adopt in whole or in part a recommendation of any such agency, the Commission shall publish each of the following findings (together with a statement of the basis for each of the findings):

[(A) A finding that adoption of such recommendation is inconsistent with the purposes and requirements of this Part or with other applicable provisions of law.

[(B) A finding that the conditions selected by the Commission comply with the requirements of paragraph (1) Subsection (i) shall not apply to the conditions required under this subsection.]

(2) *With respect to a project located in part or in whole within a reservation, other than an Indian reservation, and not located at a*

Government dam, a license issued under this Part shall include conditions for the protection and utilization of such reservation. Subject to paragraph (3), such conditions shall be based on recommendations received from the Secretary under whose supervision such reservation falls.

(3) Whenever the Commission believes that any recommendation referred to in paragraphs (1) or (2) may be inconsistent with the purposes and requirements of this Part or other applicable law, the Commission and the relevant agencies or Secretaries referred to in paragraphs (1) and (2) shall attempt to resolve any such inconsistency, given due weight to the recommendations, expertise and statutory responsibilities of such agencies or Secretaries. If, after such attempt, the Commission does not adopt in whole or in part a recommendation of any such agency or Secretary, the Commission shall publish each of the following findings (together with a statement of the basis for each of the findings):

(A) A finding that adoption of such recommendation is inconsistent with the purposes and requirements of this Part or with other applicable provisions of law.

(B) A finding that the conditions selected by the Commission comply with the requirements of paragraph (1) or (2) as appropriate.

SEC. 23. (a) * * *

(b)(1) It shall be unlawful for any person, State, or municipality, for the purpose of developing electric power, to construct, operate, or maintain any dam, water conduit, reservoir, power house, or other works incidental thereto across, along, or in any of the navigable waters of the [United States, or upon] *United States (except fresh waters in the State of Hawaii), or upon any part of the public lands or reservations of the United States (including the Territories), or utilize the surplus water or water power from any Government dam, except under and in accordance with the terms of a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to this Act. Any person, association, corporation, State or municipality intending to construct a dam or other project works across, along, over, or in any stream or part thereof, other than those defined herein as navigable waters, and over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States shall before such construction file declaration of such intention with the Commission, whereupon the Commission shall cause immediate investigation of such proposed construction to be made, and if upon investigation it shall find that the interests of interstate or foreign commerce would be affected by such proposed construction such person, association, corporation, State, or municipality shall not construct, maintain, or operate such dam or other project works until it shall have applied for and shall have received a license under the provisions of this Act. If the Commission shall not so find, and if no public lands or reservations are affected, per-*

mission is hereby granted to construct such dam or other project works in such stream upon compliance with State laws.

(2) No person may commence any significant modification of any project licensed under, or exempted from, this Act unless such modification is authorized in accordance with terms and conditions of such license or exemption and the applicable requirements of this Part. As used in this paragraph, the term "commence" refers to the beginning of physical on-site activity other than surveys or testing.

(c) *In the case of any project works: (1) that are not part of a project licensed under this Act prior to the date of enactment of this subsection; (2) for which a license application has not been accepted for filing by the Commission prior to the date of enactment of this subsection (unless such application is withdrawn at the election of the applicant); (3) having a power production capacity of 5000 kilowatts or less; (4) located entirely within the boundaries of a single State; and (5) not located on any Indian reservation, unit of the National Park System, component of the Wild and Scenic Rivers System or segment of a river designated for study for potential addition to such system, the State in which such project works are located shall have the exclusive authority to authorize such project works under State law, in lieu of licensing by the Commission under the otherwise applicable provisions of this Part, effective upon the date on which the Governor of the State notifies the Secretary of Energy that the State has assessed its river resources in a comprehensive way and has in place a process for regulating such projects which gives appropriate consideration to the improvement or development of the State's waterways for the use or benefit of intrastate, interstate, or foreign commerce, for the improvement and use of waterpower development, for the adequate protection, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds), and for other beneficial public uses, including irrigation, flood control, water supply, recreational and other purposes, and Indian rights, if applicable.*

(d) *In the case of a project that would be subject to authorization by a State under subsection (c) but for the fact that the project has been licensed by the Commission prior to the enactment of subsection (c), the licensee of such project may in its discretion elect to make the project subject to the authorizing authority of the State.*

(e) *With respect to projects located in whole or in part on Federal lands, State authorizations for project works pursuant to subsection (c) of this section shall be subject to the approval of the Secretary having jurisdiction with respect to such lands and subject to such terms and conditions as the Secretary may prescribe.*

(f) *Nothing in subsection (c) shall preempt the application of Federal environmental, natural or cultural resources protection laws according to their terms.*

* * * * *

SEC. 209. (a) * * *

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(d)(1) *Except as set forth in paragraph (2), nothing in this Act shall limit the authority of a State commission in accordance with*

State law to allow or disallow on grounds of prudence or imprudence the inclusion of the costs of electric energy purchased at wholesale in retail rates subject to such State commission's jurisdiction; Provided, That at the request of a utility which has been offered a sale of electric energy at wholesale from an exempt wholesale generator, any State commission with jurisdiction over the retail rates of such utility shall determine the prudence or imprudence of the utility's proposed action with regard to the offer in advance of the effective date of the action, and such determination shall be binding upon the State commission for purposes of the inclusion in retail rates.

(2) An order by the Commission accepting or establishing as just and reasonable the terms of an agreement for the sale and purchase or interchange of electric energy among affiliates of a registered holding company shall preempt the authority of any State commission to determine the prudence of any purchase of electric energy pursuant to that agreement.

(3) Paragraph (2) shall not apply to: (A) the purchase of electric energy at wholesale by an affiliate of a registered holding company from an exempt wholesale generator; or (B) the purchase of electric energy at wholesale by an affiliate of a registered holding company from a person other than an exempt wholesale generator when the economic substance of such purchase amounts to an indirect purchase of electric energy from an exempt wholesale generator. For purposes of this subsection (d), energy purchased by an affiliate of a registered holding company as a result of the operation of an integrated holding company shall not be deemed to be an indirect purchase of electric energy from an exempt wholesale generator.

(4) For purposes of this subsection the term—

(A) "exempt wholesale generator" has the same meaning as provided in Title XV of the National Energy Security Act of 1991;

(B) "affiliate" and "registered holding company" have the same meanings as provided in the Public Utility Holding Company Act of 1935;

(C) "purchase of electric energy at wholesale" means a purchase of electric energy by any person for resale; and

(D) "retail rates" means rates and charges for the sale of electric energy to consumers.

* * * * *

REHEARINGS; COURT REVIEW OF ORDERS

SEC. 313. (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this Act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. [Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been

denied.] *Unless the Commission issues a final order on the application for rehearing within sixty days after it is filed, such application shall be deemed denied: Provided, That the Commission may, for good cause, extend the period for rehearing an additional ninety days or, in the case of a rulemaking proceeding, an additional one hundred and twenty days.* No proceeding to review any orders of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act.

(b) [Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.] *Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within thirty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. The petition shall set forth specifically the ground or grounds upon which such petition is based. A copy of such petition shall forthwith be transmitted by the clerk of the court to the chairman of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive to affirm modify or set aside the order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court*

may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

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PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

* * * * *

Subtitle B—Standards for Electric Utilities

SEC. 111. CONSIDERATION AND DETERMINATION RESPECTING CERTAIN RATEMAKING STANDARDS

* * * * *

(7) ENCOURAGEMENT OF INVESTMENTS IN CONSERVATION AND ENERGY EFFICIENCY RESOURCES.—

(A) *The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources and other demand side management measures are at least as profitable, taking into account income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in the expenditures for the construction of new generating equipment.*

(B)(i) *The rates allowed to be charged by a State-regulated electric utility shall be such that the utility is encouraged to make investments and expenditures for all cost-effective improvements in the energy efficiency of power generation, transmission and distribution.*

(ii) *For purposes of meeting the standard provided in clause (i) of this subparagraph, each State regulatory authority shall consider the disincentives caused by existing ratemaking policies, as well as incentives that would encourage better maintenance, and investment in more efficient power generation, transmission technologies.*

(C)(i) *Each State regulatory authority shall require each electric utility for which it has ratemaking authority to employ a planning and selection process for new energy resources that evaluates the full range of alternatives, including new power supplies, energy conservation and efficiency, and renewable energy resources, in order to provide ade-*

quate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

(ii) All plans or filings before a State regulatory authority to meet the requirements of clause (i) of this subparagraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented.

(iii) For purposes of clause (i) of this subparagraph, the term "system cost" shall mean all direct quantifiable net costs for an energy resource over its available life, including the cost of production, transportation, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply.

(D) For purposes of implementing the provisions of this paragraph, any reference contained in this title to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of the National Energy Security Act of 1991.

(8) *Consideration of the Effects of Wholesale Power Purchases on Utility Cost of Capital; Effects of Leveraged Capital Structures on the Reliability of Wholesale Power Sellers; and Assurance of Adequate Fuel Supplies.*—

(A) To the extent that a State regulatory authority requires or allows electric utilities for which it has ratemaking authority to consider the purchase of long-term wholesale power supplies as a means of meeting incremental electric demand, such authority shall:

(i) perform a general evaluation of the potential for increases or decreases in the costs of capital for such utilities, and any resulting increases or decreases in the retail rates paid by electric consumers, that may result from purchases of long-term wholesale power supplies in lieu of the construction of new generation facilities by such utilities;

(ii) perform a general evaluation of any negative or positive effects on the reliability of electric service provided by such utilities that may result from purchases of long term wholesale power supplies from sellers that have capital structures which employ proportionally greater amounts of debt than the capital structures of such utilities;

(iii) consider whether the use by exempt wholesale generators (as defined in Title XV of the National Energy Security Act of 1991) of capital structures employing less than 35 percent equity threatens reliability

or provides an unfair advantage for exempt wholesale generators over such utilities;

(iv) implement procedures for the advance approval or disapproval of the purchase of a particular long term wholesale power supply which procedures reflect the results of evaluations under clauses (i), (ii) and (iii); and

(v) require as a condition for the approval of the purchase of a particular long term wholesale power supply that the seller have, and continue to have, access to sources of fuel on terms and conditions adequate to provide reasonable assurance of the seller's ability to perform its obligations under the terms of the contract for the sale of such power supply.

(B) For purposes of implementing the provisions of this paragraph, any reference contained in this title to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of the National Energy Security Act of 1991.

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OUTER CONTINENTAL SHELF LANDS ACT

(43 U.S.C. 1331-1356)

* * * * *

TITLE II—COASTAL STATE AND COMMUNITY OUTER CONTINENTAL SHELF IMPACT ASSIST- ANCE ACT

SEC. 201. SHORT TITLE.

This title may be cited as the "Coastal State and Community Outer Continental Shelf Impact Assistance Act".

SEC. 202. DEFINITIONS.

For purposes of this title the term—

(1) "coastal State" means any State of the United States bordering on the Atlantic Ocean, the Pacific Ocean, the Arctic Ocean, or the Gulf of Mexico;

(2) "coast line" has the meaning given such term under the Submerged Lands Act (43 U.S.C. 1301 et seq.);

(3) "Secretary" means the Secretary of the Interior; and

(4) "new revenues" means:

(A) all bonuses paid as a result of lease sales conducted pursuant to the Outer Continental Shelf Lands Act on or after February 5, 1991;

(B) all rents and other moneys other than royalties payable to the Secretary on or after February 5, 1991, related to a lease issued pursuant to the Outer Continental Shelf Lands Act; and

(C) all royalties attributable to a well or mining operation from which production commenced on or after Febru-

ary 5, 1991, and payable to the Secretary under the Outer Continental Shelf Lands Act; plus interest thereon.

SEC. 203. COASTAL STATE AND COMMUNITY OUTER CONTINENTAL SHELF IMPACT ASSISTANCE FUND.

(a) **ESTABLISHMENT.**—There is established an interest bearing special account in the Treasury of the United States to be known as the Coastal State and Community Outer Continental Shelf Impact Assistance Fund (hereinafter in this Act referred to as “the Fund”). All payments made by the Secretary to carry out the provisions of this title shall be paid from the Fund, only to the extent provided for in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this title shall be kept on deposit or invested in obligations of, or guaranteed by, the United States. The Fund shall be available to the Secretary without fiscal year limitation as a special account for the purposes of carrying out this title.

(b) **PAYMENTS TO FUND.**—Beginning in fiscal year 1992, the Secretary shall pay into the Fund not later than 60 days after the end of the preceding fiscal year, an amount equal to 37.5 percent of all new revenues, as defined herein, derived during the preceding fiscal year which are attributable to an Outer Continental Shelf lease any part of which is within 200 geographical miles of the coast line.

SEC. 204. DISPOSITION OF FUND.

(a) **STATE IMPACT ASSISTANCE.**—(1) Subject to appropriation, the Secretary shall transmit to the coastal state annually the revenues payable to such coastal state pursuant to this title, plus interest thereon.

(2) Subject to paragraph (3), the amounts to be paid to coastal states under this subsection shall be, with respect to any such state for any fiscal year, the sum of the amounts calculated, with respect to such state, pursuant to subparagraphs (A), (B), and (C):

(A) An amount which bears, to one-half of the amount appropriated for such fiscal year, the same ratio that the amount of Outer Continental Shelf acreage which is adjacent to such state and which is newly leased by the Federal Government in the immediately preceding fiscal year bears to the total amount of Outer Continental Shelf acreage which is newly leased by the Federal Government in such preceding year.

(B) An amount which bears, to one-quarter of the amount appropriated for such fiscal year, the same ratio that the volume of oil and natural gas produced in the immediately preceding fiscal year from the Outer Continental Shelf acreage which is adjacent to such state and which is leased by the Federal Government bears to the total volume of oil and natural gas produced in such year from all of the Outer Continental Shelf acreage which is leased by the Federal Government.

(C) An amount which bears, to one-quarter of the amount appropriated for such fiscal year, the same ratio that the volume of oil and natural gas produced from Outer Continental Shelf acreage leased by the Federal Government which is first landed in such state in the immediately preceding fiscal year bears to the total volume of oil and natural gas produced from all Outer

Continental Shelf acreage leased by the Federal Government which is first landed in all of the coastal states in such year.

(3)(A)(i) After making the calculations required under paragraph (2) for any fiscal year, the Secretary shall—

(I) with respect to any coastal state which, based on such calculations, would receive an amount which is less than 2 per centum of the amount appropriated for such fiscal year, increase the amount payable to such coastal state to 2 per centum of such appropriated amount; and

(II) with respect to any coastal state which, in such fiscal year, would not receive a payment under paragraph (2), make a payment to such coastal state in an amount equal to 2 per centum of the total amount appropriated for making payments to all states under paragraph (2) in such fiscal year if any other coastal state in the same region will receive a payment under such paragraph in fiscal year, except that a coastal state shall not receive a payment under this clause unless the Secretary determines that it is being or will be impacted by activities conducted pursuant to a lease issued pursuant to the Outer Continental Shelf Lands Act.

(ii) For purposes of this subparagraph—

(I) the states of Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia (the Atlantic coastal states) shall constitute one "region";

(II) the states of Alabama, Florida, Louisiana, Mississippi, and Texas (the Gulf coastal states) shall constitute one "region";

(III) the states of California, Hawaii, Oregon, and Washington (the Pacific coastal states) shall constitute one "region"; and

(IV) the state of Alaska shall constitute one "region".

(B) If, after the calculations required under subparagraph (A), the total amount of funds appropriated for making payments to coastal states in any fiscal year pursuant to this subsection is less than the total amount of payments payable to all coastal states in such fiscal year, there shall be deducted from the amount payable to each coastal state which will receive more than 2 per centum of the amount of funds so appropriated an amount equal to the product of—

(i) the amount by which the total amount of payments payable to all coastal states in such fiscal year exceeds the total amount of funds appropriated for making such payments; multiplied by

(ii) a fraction, the numerator of which is the amount of payments payable to such coastal state in such fiscal year reduced by an amount equal to 2 per centum of the total amount appropriated for such fiscal year and the denominator of which is the total amount of payments payable to coastal states which, in such fiscal year, will receive more than 2 per centum of the amount of funds so appropriated, reduced by an amount equal to the product of 2 per centum of the total amount appropriated

for such fiscal year multiplied by the number of such coastal states.

(C)(i) If, after the calculations required under subparagraph (B) for any fiscal year, any coastal state would receive an amount which is greater than 37.5 per centum of the amount appropriated for such fiscal year, the Secretary shall reduce the amount payable to such coastal state to 37.5 per centum of such appropriated amount.

(ii) Any amount not payable to a coastal state in a fiscal year due to a reduction under clause (i) shall be payable proportionately to all coastal states which are to receive more than 2 per centum and less than 37.5 per centum of the amount appropriated for such fiscal year, except that in no event shall any coastal state receive more than an additional 3 per centum of such appropriated amount under this clause.

(iii) For purposes of this subparagraph, the term "payable proportionately" means payment in any fiscal year in accordance with the provisions of paragraph (2), except that in making calculations under such paragraph the Secretary shall only include those coastal states which are to receive more than 2 per centum and less than 37.5 per centum of the amount appropriated for such fiscal year.

(4) For purposes of making calculations under paragraph (2), Outer Continental Shelf acreage is adjacent to a particular coastal state if such acreage lies on that state's side of the extended lateral seaward boundaries of such state. The extended lateral seaward boundaries of a coastal state shall be determined as follows:

(A) If lateral seaward boundaries have been clearly defined or fixed by an interstate compact, agreement, or judicial decision (if entered into, agreed to, or issued before the date of the enactment of this paragraph), such boundaries shall be extended on the basis of the principles of delimitation used to so define or fix them in such compact, agreement, or decision.

(B) If no lateral seaward boundaries, or any portion thereof, have been clearly defined or fixed by an interstate compact, agreement, or judicial decision, lateral seaward boundaries shall be determined according to the applicable principles of law, including the principles of the Convention on the Territorial Sea and the Contiguous Zone, and extended on the basis of such principles.

(C) If, after the date of enactment of this paragraph, two or more coastal states enter into or amend an interstate compact or agreement in order to clearly define or fix lateral seaward boundaries, such boundaries shall thereafter be extended on the basis of the principles of delimitation used to so define or fix them in such compact or agreement.

(b) COUNTY AND COMMUNITY IMPACT ASSISTANCE.—The revenues paid by the Secretary to a coastal State under subsection (a) shall be used by such state and its subdivisions, as the legislature of the state may direct, giving priority to those subdivisions of the state socially, environmentally, or economically impacted by development of minerals on the Outer Continental Shelf, for (i) planning, (ii) construction and maintenance of public facilities, (iii) environmental activities, and (iv) provision of public services.

SEC. 205. RELATIONSHIP TO OTHER LAW.

The payment of funds pursuant to this title shall be in addition to any payments made to a State under any other provision of this Act or any other provision of law.

* * * * *

ENERGY SECURITY ACT

* * * * *

[TITLE III—ENERGY TARGETS**[PREPARATION OF ENERGY TARGETS**

[SEC. 301. (a) During the first calendar week beginning in February of 1981, and of every second year thereafter, the President shall transmit to the Congress energy targets for net imports, domestic production, and end-use consumption of energy for the calendar years 1985, 1990, 1995, and 2000. Such targets shall be transmitted in the form prescribed in section 303.

[(b) In preparing energy targets under this section, the President shall take into account anticipated energy conservation and anticipated production of energy from new technologies, and shall transmit with the targets supporting data together with a statement of the assumptions on which the targets are based.

[(c) During the first calendar week beginning in February of 1982, and of every second year thereafter, the President shall transmit to the Congress reports regarding the energy targets transmitted during the preceding year.

[(d) The President shall not transmit any revised target (or supporting data) for any calendar year which has then elapsed.

[CONGRESSIONAL CONSIDERATION

[SEC. 302. (a)(1) Any Department of Energy authorization bill for fiscal year 1982 and any bill for fiscal year 1984 which is proposed in an executive communication to the Congress shall include the targets required by section 301(a) to be transmitted in February of the preceding fiscal year. Such targets shall be in the form prescribed in section 303 and shall be set forth as a separate title at the end of the proposed bill.

[(2) The energy targets transmitted to the Congress under section 301 shall be considered by any committee of the House of Representatives or the Senate in connection with any Department of Energy authorization bill for fiscal year 1982 or fiscal year 1984. This paragraph shall apply during the Ninety-seventh Congress (with respect to Department of Energy authorization bills for later fiscal years) to the extent expressly provided in any Act (other than an appropriation Act) approved after the date of the enactment of this Act.

[(3)(A) During the Ninety-seventh Congress and the Ninety-eighth Congress, it shall be in order (notwithstanding any rule or provision of law) during the consideration in the House of Representatives, in the Senate, or in any committee of either, of any De-

partment of Energy authorization bill for fiscal year 1982 or fiscal year 1984, or a joint resolution (as defined in subsection (d)(1)(B)), to offer and consider, receipt as provided in subparagraph (B)—

[(i) any amendment (or series of amendments) only changing the number of any energy target contained in such bill or resolution, or

[(ii) in the case of any such authorization bill, any amendment only adding a title containing only energy targets in the form prescribed in section 303 if such bill does not contain such a title, or only deleting such a title contained in such bill.

[(B) Any amendment (or series of amendments) referred to in subparagraph (A) shall not be in order unless it continues or achieves mathematical consistency within the targets.

[(b)(1) If—

[(A) on or before May 15, 1981, no Department of Energy authorization bill for fiscal year 1982 has been reported to either House of the Congress by any of the respective authorizing committees, or

[(B) no committee which has reported such an authorization bill in either House by such date has included energy targets in the form prescribed in section 303 as a separate title,

a joint resolution introduced in the Senate or the House of Representatives after such date shall be subject to the provisions of this section and shall immediately be referred to the appropriate authorizing committees, which shall have until July 15, 1981, to consider and report such resolution.

[(2) If on or before July 15, 1981, the appropriate authorizing committees of the House of Representatives or the Senate have not reported such a joint resolution, such committees of the House may be discharged from further consideration of such joint resolution (or any other joint resolution) in accordance with paragraph (4) of section 552(d) of the Energy Policy and Conservation Act (as if it were a resolution relating to a contingency plan) if a motion for such a discharge is made during the period of 20 calendar days of continuous session of Congress which follows July 15, 1981.

[(3) The provisions of subsections (c) and (d)(5) and (6) of section 552 of such Act shall apply with respect to the consideration of such a joint resolution in either House, except that—

[(A) debate on such joint resolution shall be limited to not more than 3 hours,

[(B) it shall be in order (notwithstanding any rule or provision of law) to offer and consider any amendment (or series of amendments) permitted under subsection (a)(3), and

[(C) the references in such provisions to any resolution relating to a contingency plan shall be considered to refer to a joint resolution under this section.

[(c) In the consideration of any Department of Energy authorization bill containing a title setting forth energy targets, the question of whether any amendment (other than an amendment referred to in subsection (a)(3)) to any portion of such bill (including such title) is in order in the House of Representatives, in the Senate, or in any committee of either, shall be determined as if the title containing such targets were not in the bill.

[(d)(1) For purposes of this section—

[(A) the term “Department of Energy authorization bill” means any general authorization of appropriations for the civilian programs and activities of the Department of Energy;

[(B) the term “joint resolution” means only a joint resolution of either House of Congress (i) which is entitled “Joint resolution relating to energy targets.”, (ii) which does not contain a preamble, and (iii) the matter after the resolving clause of which only contains energy targets in the form prescribed by section 303; and

[(C) the term “energy targets” makes any number contained in the form prescribed in section 303.

(2) This section is enacted by Congress—

[(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of Department of Energy authorization bills and joint resolutions described by paragraph (1) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

[(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

[ENERGY TARGET FORM

[Sec. 303. (a) For purposes of this title, energy targets shall be set forth in the following form:

[ENERGY TARGETS

[Quadrillion Btu's per year]

	1985	1990	1995	2000
Domestic production:				
Crude oil and NGL				
Natural gas				
Coal				
Nuclear				
Renewables and geothermal				
Other				
Subtotal				
Imports:				
Crude oil and refined petroleum				
Natural gas				
Coal				
Other				
Subtotal				
Total supply				
End-use consumption:				
Petroleum liquids				
Natural gas				
Direct coal				
Electricity				

[ENERGY TARGETS—Continued]

[Quadrillion Btu's per year]

	1985	1990	1995	2000
Decentralized renewables				
Other				
Subtotal				
Conversion loss				
Total consumption]				

[(b) As used in subsection (a)—

[(1) the term “crude oil and NGL” includes liquid products obtained from lease operations, field facilities, and natural gas processing plants and liquid petroleum obtained from shale and tarsands;

[(2) the term “coal”, when used under the domestic production category, includes coal which is converted to gaseous or liquid fuels;

[(3) the term “renewables” includes energy or fuel derived directly from sunlight from biomass (as defined in section 203), and hydropower sources;

[(4) the term “end-use consumption” does not include exports of fuel or electricity;

[(5) the term “decentralized renewables” does not include electricity produced for delivery to multiple points of end-use consumption; and

[(6) the term “conversion loss” includes heat or other forms of energy not recovered in the conversion of raw energy resources, fuels, or electricity into alternate form prior to delivery for end-use consumption.

[GENERAL PROVISIONS REGARDING TARGETS]

[SEC. 304. (a) The energy targets set forth pursuant to this title in any joint resolution or any Act authorizing appropriations for the Department of Energy shall be considered as an expression of national goals and shall not be considered to have any legal force or effect.

[(b) Expenses paid or incurred by the President for preparing the energy targets and reports under this title shall be from funds otherwise available to the Department of Energy, consistent with otherwise applicable law. Such targets and reports shall be prepared using the minimum extent of contracting assistance that is required for their preparation. If any assistance is required to be obtained by contract for the preparation of the targets and reports, that assistance shall be limited to the providing of supporting information and may not include the preparation or recommendation of any proposed or final energy target.

[(c) The preparation and transmission of such targets or reports shall not be considered a major Federal action for the purposes of the National Environmental Policy Act of 1969.]

* * * * *

PUBLIC LAW 95-91

AN ACT To establish a Department of Energy in the executive branch by the reorganization of energy functions within the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes.

* * * * *

SEC. 203. (a) * * *

* * * * *

(12) the export and promotion to lesser-developed countries of domestic energy resource technologies and products, including renewable energy, energy efficiency, and clean coal technologies, and the development of policies and programs designed to enhance the knowledge of foreign governments and companies, and relevant international lending institutions regarding domestic energy resource technologies and products.

* * * * *

TITLE VI—FEDERAL ENERGY REGULATORY COMMISSION

APPOINTMENT AND ADMINISTRATION

SEC. 401. (a) There is hereby established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

* * * * *

(k) For the purposes of this Act or any other Act, discussions by all members of the Commission on matters of general policy shall not be considered a meeting.

SEC. 403. (a) * * *

* * * * *

(c) [Any function described in section 402 of this Act which relates to the establishment of rates and charges under the Federal Power Act or the Natural Gas Act, may be conducted by rulemaking procedures.] *Any function described in section 402 of this Act which relates to the establishment of rates and charges under the Federal Power Act or to the establishment of rates and charges, the issuance of a certificate of public convenience and necessity, or the abandonment of facilities and services under the Natural Gas Act may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.*

* * * * *

AN ACT To authorize a new HOME Investment Partnerships program, a National Homeownership Trust program, and HOPE programs, to amend and extend certain laws relating to housing, community and neighborhood preservation, and related programs, and for other programs

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Cranston-Gonzalez National Affordable Housing Act”.

SEC. 104. DEFINITIONS.

As used in this title and in title II:

(24) The term “energy efficient mortgage” means a mortgage which provides financial incentives for the purchase of energy efficient homes, or which provides financial incentives to make energy efficiency improvements in existing homes by incorporating the cost of such improvements in the mortgage.

TITLE IX—COMMUNITY DEVELOPMENT AND MISCELLANEOUS PROGRAMS

Subtitle C—Regulatory Programs

SEC. 943. NATIONAL COMMISSION ON MANUFACTURED HOUSING.

(d) **FUNCTIONS OF THE COMMISSION.**—

(1) **IN GENERAL.**—The Commission shall study and investigate the National Manufactured Housing Construction and Safety Standards Act of 1974 and current construction and safety regulatory standards applicable to manufactured housing. In conducting the study, the Commission shall—

(A) consult with the Secretary of Housing and Urban Development and other agencies and housing authorities at the Federal, State, and local level, consumer groups, manufactured housing industry representatives, and other interested parties to assess the effectiveness of the National Manufactured Housing Construction and Safety Standards Act of 1974;

(B) consider deletion of the reference to the permanent chassis in the existing definition of a manufactured home and the effect of such a change on the affordability and durability of manufactured homes;

(C) examine the implications for State regulatory jurisdiction over modular housing, in the event of changes in definitions and standards relating to manufactured housing;

(D) consider the need for additional and revised standards applicable to manufactured housing, including, but not limited to standards in the areas of construction, installation, [thermal insulation, energy efficiency,] and fire safety;

(E) consult with the Secretary of Energy and make recommendations regarding additional or revised standards for thermal insulation and energy efficiency applicable to manufactured housing;

[(E)] (F) review the current system of inspections of manufactured housing and enforcement of applicable standards and recommend improvements to the system;

[(F)] (G) consider the need for independent financing of inspection agencies to insure the autonomy of regulators;

[(G)] (H) evaluate the impact of the manufactured housing program under the title I of the National Housing Act on the actuarial soundness of Federal mortgage insurance and secondary market programs, and the impact that proposed changes to current law would have on financing of these homes; and

[(H)] (I) develop an action plan containing specific recommendations for legislative and regulatory revisions to present law (taking into consideration the amendments contained in section 766 of the bill, H.R. 1180, 101st Congress, 2d Session, as passed by the House of Representatives) in order to modernize the National Manufactured Housing Construction and Safety Standards Act of 1974 and a system for reviewing and updating applicable standards on an annual basis.

* * * * *

SEC. 946. UNIFORM MORTGAGE FINANCING PLAN FOR ENERGY EFFICIENCY.

(a) **UNIFORM PLAN.**—The Secretary of Housing and Urban Development, in consultation with the Secretary of Energy, shall promulgate a uniform plan to make housing more affordable through [mortgage financing incentives for energy efficiency.] *energy efficient mortgages.* The plan shall be promulgated not later than 2 years after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act. *The plan shall be consistent with and mutually supportive of the Federal Building Energy Standard and the residential energy efficiency rating voluntary guidelines to be developed by the Secretary of Energy pursuant to the National Energy Security Act of 1991.*

(b) **TASK FORCE.**—To develop the plan, the Secretary shall form a task force to make recommendation on financing energy efficiency in private mortgages, through the policies of Federal agencies and federally chartered financial institutions, mortgage bankers, homebuilders, real estate brokers, private mortgage insurers, energy suppliers, and nonprofit housing and energy organizations. The task force shall include *but not be limited to* individuals representing the Federal Housing Administration mortgage programs of the Department of Housing and Urban Development, the Farmers Home Administration mortgage loan and insurance programs of

Department of Agriculture, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association. *The Task Force shall determine whether a notification of the availability of energy efficient mortgages to potential home purchasers would promote energy efficiency in residential buildings, and if so, then the Task Force shall recommend appropriate notification guidelines, and member agencies are authorized to implement such guidelines.*

* * * * *

PUBLIC LAW 101-218

AN ACT To provide Federal assistance and leadership to a program of research, development, and demonstration of renewable energy and energy efficiency technologies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be referred to as the "Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989".

* * * * *

SEC. 4. NATIONAL GOALS AND MULTI-YEAR FUNDING FOR FEDERAL WIND, PHOTOVOLTAICS, AND SOLAR THERMAL PROGRAMS.

* * * * *

(c) AUTHORIZATIONS.—There are authorized to be appropriated to the Secretary for the following renewable energy research, development, and demonstration programs: the Wind Energy Research Program, the Photovoltaic Energy Systems Program, the Solar Thermal Energy Systems Program, the Biofuels Energy Systems Program, the Hydrogen Energy Systems Program, the Solar Buildings Energy Systems Program, the Ocean Energy Systems Program, and the Geothermal Energy Systems Program—

[(1) not to exceed \$113,000,000 for fiscal year 1991, of which—

[(A) not to exceed \$39,000,000 shall be available for the Photovoltaic Energy Systems Program;

[(B) not to exceed \$19,000,000 shall be available for the Geothermal Energy Systems Program; and

[(C) not to exceed \$4,000,000 shall be available for the Hydrogen Energy Systems Program;

[(2) not to exceed \$121,000,000 for fiscal year 1992, of which—

[(A) not to exceed \$40,000,000 shall be available for the Photovoltaic Energy Systems Program;

[(B) not to exceed \$20,500,000 shall be available for the Geothermal Energy Systems Program; and

[(C) not to exceed \$5,000,000 shall be available for the Hydrogen Energy Systems Program; and

[(3) not to exceed \$124,000,000 for fiscal year 1993, of which—

[(A) not to exceed \$40,000,000 shall be available for the Photovoltaic Energy Systems Program;

[(B) not to exceed \$23,000,000 shall be available for the Geothermal Energy Systems Program; and

[(C) not to exceed \$6,000,000 shall be available for the Hydrogen Energy Systems Program.

[Each of the President's annual budget requests submitted to Congress after the date of enactment of this Act shall include as separate line items each of the categories of renewable energy programs described in this subsection.]

(1) *such sums as may be necessary for fiscal year 1992;*

(2) *such sums as may be necessary for fiscal year 1993; and*

(3) *such sums as may be necessary for fiscal year 1994.*

Each of the President's annual budget requests submitted to Congress after the date of enactment of this Act shall include as separate line items each of the categories of renewable energy programs described in this subsection.

SEC. 5. ENERGY EFFICIENCY AUTHORIZATIONS.

There are authorized to be appropriated to the Secretary for the following energy efficiency research, development, and demonstration programs: transportation, industrial, buildings and community systems, multi-sector, and policy and management—

[(1) not to exceed \$201,100,000 for fiscal year 1991, of which—

[(A) not to exceed \$68,300,000 shall be available for the transportation program; and

[(B) not to exceed \$53,500,000 shall be available for the industrial program;

(2) not to exceed \$210,600,000 for fiscal year 1992, of which—

[(A) not to exceed \$71,000,000 shall be available for the transportation program; and

[(B) not to exceed \$54,700,000 shall be available for the industrial program; and

[(3) not to exceed \$225,000,000 for fiscal year 1993, of which—

[(A) not to exceed \$73,900,000 shall be available for the transportation program; and

[(B) not to exceed \$56,900,000 shall be available for the industrial program.]

(1) *such sums as may be necessary for fiscal year 1992;*

(2) *such sums as may be necessary for fiscal year 1993; and*

(3) *such sums as may be necessary for fiscal year 1994.*

* * * * *

SEC. 6. JOINT VENTURES.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—For purposes of this section, Congress finds that joint ventures can—

(A) improve coordination in technology development among firms in industries attempting to commercialize renewable energy efficiency technologies;

(B) facilitate transfer of renewable energy and energy efficiency technologies, including critical enabling technologies, to the private sector; and

(C) enhance the ability of domestic firms to compete with foreign enterprises in sales of renewable energy and energy efficiency technologies.

(2) **PURPOSE.**—The purpose of this section is to direct the Secretary to make use of joint ventures to further commercialization of renewable energy and energy efficiency technologies.

(b) **JOINT VENTURES.**—

(1) **ESTABLISHMENT.**—The Secretary shall solicit proposals for joint ventures in each of the technology areas under [subsection (c).] *subsections (c), (f), (g) and (h).* The Secretary shall select at least one joint venture in each of those technology areas, unless no qualified proposals in that area are received. Each joint venture selected under this section shall include at least one for-profit business. Research and development activities supported under this section shall be performed in the United States. Each joint venture under this section shall require the manufacture and reproduction, substantially within the United States, for commercial sale of any invention that may result from the joint venture.

* * * * *

[(4) **DRAFT SOLICITATION AND PUBLIC COMMENT.**—The Secretary shall issue a draft solicitation for joint ventures by September 30, 1990. After such draft solicitation has been issued, the Secretary shall provide for a period of public comment before the issuance of a final solicitation.]

(4) DRAFT SOLICITATIONS AND PUBLIC COMMENT.—The Secretary shall issue a draft solicitation for joint ventures under subsection (c) by September 30, 1990 and a draft solicitation for joint ventures under subsections (f), (g) and (h) by September 30, 1992. After any such draft solicitation has been issued, the Secretary shall provide for a period of public comment before the issuance of a final solicitation.

* * * * *

(d) **SECRETARIAL DISCRETION.**—(1) If the Secretary, based on the recommendations of the Advisory Committee under subsection (b)(3)(B), with respect to a technology described in paragraph (1), (2), (3), (4), or (5) of [subsection (c)] *subsections (c) or (f), (g) and (h)* determines, that—

(A) there is insufficient private sector interest in joint ventures for the demonstration of such technology to satisfy the requirement of subsection (b)(2); or

(B) such joint ventures will substantially substitute for research, development, and demonstration activities already financed by the private sector,

then the Secretary shall not be subject to the requirements of this section with respect to the technology described in such paragraph, and the Secretary shall notify Congress and provide a written explanation of the reasons for the determination.

(2) Promptly after notifying the Congress under paragraph (1), the Secretary shall consult with the Advisory Committee, and, based on the recommendations of such Committee, shall promptly transmit to Congress a plan for the selection of a substitute field or

technology in which to solicit joint ventures that develop or demonstrate, consistent with this section, an alternative renewable energy or energy efficiency technology so as to accomplish the purpose of this Act. Any unexpended funds authorized to be appropriated under [subsection (c)] subsections (c) or (f), (g) and (h) for joint ventures with respect to which a determination is made under paragraph (1) may be used for a substitute joint venture selected under this paragraph.

(3) When 30 calendar days have elapsed after transmittal of a plan under paragraph (2), the Secretary shall proceed with solicitations for joint ventures appropriate to that plan as if such joint ventures were required under [subsection (c)] subsections (c) or (f), (g) and (h).

* * * * *

(f) ADDITIONAL JOINT VENTURES FOR RENEWABLE ENERGY DEVELOPMENT FOR OIL DISPLACEMENT.—

(1) OIL DISPLACEMENT BY BIOFUELS ENERGY SYSTEMS.—

(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of biofuels energy systems technology in accordance with the provisions of this paragraph.

(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for the development of biofuels energy systems for commercial application in uses that have substantial prospects for displacing the consumption of oil.

(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993 and 1994 to carry out the purposes of this paragraph.

(2) OIL DISPLACEMENT BY HIGH TEMPERATURE GEOTHERMAL ENERGY.—

(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of high-temperature geothermal energy conversion technology in accordance with the provisions of this paragraph.

(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for the production of high-temperature geothermal energy for commercial application in uses that have substantial prospects for displacing the consumption of oil.

(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

(3) OIL DISPLACEMENT BY LOW-TEMPERATURE GEOTHERMAL ENERGY.—

(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of low-temperature geothermal energy

conversion technology in accordance with the provisions of this paragraph.

(B) The purposes of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for the production of low-temperature geothermal energy for commercial application in uses that have substantial prospects for displacing the consumption of oil.

(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

(4) OIL DISPLACEMENT BY SOLAR WATER HEATING.—

(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of solar water heating technology in accordance with the provisions of this paragraph.

(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for solar water heating for commercial application in institutional water heating and process heat uses that have substantial prospects for displacing the consumption of oil.

(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

(5) DIESEL FUEL OIL DISPLACEMENT BY PHOTOVOLTAIC AND WIND ENERGY SYSTEMS.—

(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of photovoltaic and wind energy systems in accordance with the provisions of this paragraph.

(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for photovoltaic and wind energy systems for commercial application in electric power generation uses that have substantial prospects for displacing the consumption of diesel fuel oil.

(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

(6) Diesel fuel oil displacement by direct combustion or gasification of biomass.—

(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of technologies for the direct combustion or gasification of biomass in accordance with the provisions of this paragraph.

(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for direct combustion or gasification of biomass, including waste wood, for industrial process

heat and electric power generation for commercial application in uses that have substantial prospects for displacing the consumption of diesel fuel oil.

(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

(7) OIL DISPLACEMENT BY FUEL CELLS TECHNOLOGY.—

(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the demonstration of fuel cells technology in accordance with the provisions of this paragraph.

(B) The purpose of joint ventures supported under this paragraph shall be to design, test, and demonstrate critical enabling technologies for the production of electric energy from fuel cells in order to accelerate commercial application of fuel cells.

(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

(g) RENEWABLE ENERGY AND ENERGY EFFICIENCY TECHNOLOGY EXPORT TRAINING.—

(1) The Secretary shall solicit proposals for and provide financial assistance to at least two joint ventures for the training of individuals from developing countries at a location or locations in the United States, at least one of which shall be in the operation and maintenance of renewable energy equipment and at least one of which shall be in the operation and maintenance of energy efficiency equipment, in accordance with the provisions of this subsection.

(2) The purpose of joint ventures supported under this subsection shall be to train individuals, including engineers and other professionals, in the operation and maintenance of renewable energy and energy efficiency equipment manufactured in the United States, including equipment for water pumping and the production of electric power in remote areas, in order to enhance the prospects that such equipment can be used to displace the use of diesel fuel oil in developing countries.

(3) There is authorized to be appropriated to the Secretary not to exceed \$6,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this subsection.

(h) UTILITY-SCALE PHOTOVOLTAIC JOINT VENTURES.—

(1) The Secretary shall solicit proposals and provide financial assistance for at least one joint venture for utility-scale photovoltaic projects of at least ten megawatts.

(2) In general, the goals of joint ventures under this subsection shall include:

(A) the integration of photovoltaics in approaches to the transmission and delivery systems,

(B) the development of cost-saving adjuncts to utility delivery such as sub-station upgrades, peak power, and large-scale voltage line augmentation, and

(C) the incorporation of new photovoltaic innovations into standard utility rate-making practices.

(3) Joint ventures supported under this subsection may include participants that are considered to be end-users of the technology such as rural electric cooperatives, public utilities, investor-owned utilities, and independent power producers.

(4) In selecting joint ventures for support under this subsection, the Secretary shall consider giving preference to proposals for projects that would be located in States where State law would allow inclusion of the project in the rate base or would otherwise allow for favorable regulatory treatment or return on investment.

(5) There is authorized to be appropriated to the Secretary not to exceed \$9,000,000 for each of fiscal years 1992, 1993, and 1994 to carry out the purposes of this subsection.

* * * * *

SEC. 11. COMMERCIALIZATION.

(a) **DEFINITIONS.**—For the purposes of this section the terms:

(1) “qualified borrower” means an enterprise, that engages in the production and sale of electricity, thermal energy or other forms of energy using a renewable energy technology, or a manufacturer or renewable energy equipment who wish to finance improvements in, or expansion of, facilities for the manufacture of renewable energy technologies;

(2) “renewable energy technology”, with respect to a participant in any provision under this section, means any technology that produces, or uses as its principal energy source, biomass, geothermal, photovoltaic, wind, or solar thermal (including solar water heating, solar industrial process preheat, and solar industrial process heat); and

(3) “Federal share” means that portion of the interest on a loan financed by a private lender that is paid by the Federal government, subject to subsection (b).

(b) **BUY DOWN AGREEMENTS.**—

(1) **IN GENERAL.**—The Secretary shall enter into agreements with private lenders to pay the Federal share of the interest on loans made to qualified borrowers for the purpose of financing the manufacture, construction or acquisition of equipment that principally utilizes a renewable energy technology. Buy down agreements entered into by the Secretary, may be implemented either directly through private lenders for Federal facilities or indirectly through an appropriate State energy office.

(2) **RESTRICTION.**—Interest rate buy down agreements under this section shall not apply to projects where electricity is sold to electric utilities under provisions of the Public Utility Regulatory Policies Act of 1978.

(3) **FEDERAL SHARE.**—The Federal share of interest on a loan shall be determined by the Secretary on the basis of—

(A) the need of the borrower for the assistance;

(B) the degree to which financing of the project will assist in the regional diversification and commercialization of renewable energy resources in the United States; and

(C) the achievement of the purposes and goals of this section.

(4) **LOAN TERMS.**—The Secretary may enter into an agreement under paragraph (1) to pay the Federal share of interest on not less than ten separate loans that—

(A)(i) have a principal amount of at least \$250,000 and less than \$1,000,000 and have a maturity of not less than 15 years; or

(ii) have a principal amount of at least \$1,000,000, and have a maturity of not less than 20 years;

(B) carry an interest rate no greater than five percent above the prime rate or at an interest rate that the Secretary determines to be reasonable; and

(C) contain such other terms and conditions that the Secretary deems appropriate.

(c) **REPORT.**—Not later than two years after the date of the enactment of this section and annually thereafter, the Secretary shall report to Congress on the projects funded under this section and the progress being made toward accomplishing the goals and purposes of this section.

(d) **AUTHORIZATION.**—There is authorized to be appropriated to the Secretary for fiscal years 1992, 1993, and 1994 such sums as may be necessary to carry out the purposes of this section.

* * * * *

SOLID WASTE DISPOSAL ACT

(42 U.S.C. 6921)

* * * * *

Subchapter III—Hazardous Waste Management

§ 6921. Identification and listing of hazardous waste

* * * * *

(i) **CLARIFICATION OF HOUSEHOLD WASTE EXCLUSION.**—A resource recovery facility recovering energy from the mass burning of municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subchapter, if—

(1) such facility—

(A) receives and burns only—

(i) household waste (from single and multiple dwellings, hotels, motels, and other residential sources), and

(ii) solid waste from commercial or industrial sources that does not contain hazardous waste identified or listed under this section, and

(B) does not accept hazardous wastes identified or listed under this section, and

(2) the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(j) USED OIL.—Notwithstanding any other provision of law, the Administrator shall not list or identify used oil as a hazardous waste under this subtitle, nor shall used oil otherwise be deemed to be a hazardous waste under this subtitle.

* * * * *

APPENDIX

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, DC, November 4, 1987.

M-36957.

CLC.SO.0001.

Memorandum to: Secretary.

From: Solicitor.

Subject: Division of Receipts from Oil and Gas Development from
the Arctic National Wildlife Refuge.

You have asked whether the Alaska Statehood Act (ASA), Pub. L. 85-508, 72 Stat. 339 (1958), in any way limits Congress' ability to enact a revenue distribution scheme for oil and gas revenues from new leases in federal wildlife refuges that is different from the revenue distribution scheme set out in the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. § 181. Your question refers specifically to the Arctic National Wildlife Refuge (ANWR). The MLA formula provides for the distribution to Alaska (the State) of 90 percent of revenues received by the United States from oil and gas leasing on public lands within the State. For the reasons discussed below, we conclude that the ASA in no way restricts Congress to the distribution scheme set out in the MLA when it enacts legislation to provide for distribution of revenues from new mineral leases in federal wildlife refuges.

BACKGROUND

At issue is the authority of Congress to determine the distribution of revenues from oil and gas leases on public lands in Alaska, and, specifically, from lands that are part of the National Wildlife Refuge System. At present, a distinction is made between revenues from acquired lands and those from reserved public domain refuge lands. Federal oil and gas revenues from acquired lands within refuges are distributed according to a schedule set out in the Wildlife Refuge Revenue Sharing Act (WRRSA) ¹ which allots 25 percent to the county in which the refuge is located and 75 percent to the Migratory Bird Conservation Fund, while federal revenues from reserved public domain lands within refuges are distributed in accordance with the Mineral Leasing Act, ² which allots 50 percent to the states, except Alaska, in which the refuge is located, 40 percent to the Reclamation Fund, and 10 percent to miscellaneous receipts

¹ Section 401, 16 U.S.C. § 715(c); *Watt v. Alaska*, 451 U.S. 259 (1981).

² Section 35, as amended, 30 U.S.C. § 191.

in the U.S. Treasury. Alaska receives 90 percent of MLA lease revenues derived from within the State. The remaining 10 percent goes to miscellaneous receipts in the U.S. Treasury. As the refuge currently at issue, ANWR, is on reserved public domain land, we will focus on the provisions of the Mineral Leasing Act in analyzing the issue presented to us.

The distribution system set out in the Mineral Leasing Act was extended to Alaska in section 28(b) of the Alaska Statehood Act, as follows:

(b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, shale, gas and sodium on the public domain", approved February 25, 1920, as amended (30 U.S.C. 191), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof."

After amendment, section 35 of the Mineral Leasing Act read as follows:

All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226d-229a, 241, 251, and 261-263 of this title shall be paid into the Treasury of the United States; *37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as part of the reclamation fund created by sections 372, , 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, and 498 of Title 43, and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: Provided, That all moneys which may accrue to the United States under the provisions of sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226d-229a, 241, 251, and 261-263 of this title from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 524 of Title 34. All moneys received under the provisions of sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226d-229a, 241, 251, and 261-263 of this title not otherwise disposed of by this section shall be credited to miscellaneous receipts. (Feb. 25, 1920, ch. 85, § 35, 41 Stat. 450; May 27, 1947, ch. 83, 61 Stat. 119; Aug. 3, 1950, ch. 527, 64 Stat. 402; July 10, 1957, Pub. L. 85-88, § 2, 71 Stat.*

282; July 7, 1958, Pub. L. 85-508, §§ 6(k), 28(b), 72 Stat. 343, 351.)³ (Emphasis added.)

The United States Senate is presently considering a bill, S. 735, that would change the distribution system as applied to revenues derived from oil and gas leasing within units of the National Wildlife Refuge System. Specifically, the bill provides that 50 percent of such revenues would go to the state, 25 percent to the Land and Water Conservation Fund and 25 percent to the federal government. If the bill passes, it will apply to all leases in any wildlife refuge issued after enactment, but it is expected that the refuge most immediately affected will be ANWR.

In recent testimony on S. 735 before the Senate Energy and Natural Resources Subcommittee on Public Lands, National Parks and Forests, and in documents submitted to us in connection with our consideration of this issue, representatives of the State of Alaska have argued that Congress cannot legally enact a revenue distribution formula that provides Alaska less than 90 percent of mineral leasing revenues from the leasing of public lands in Alaska without the consent of the State.⁴

ANALYSIS

The enactment of legislation establishing a distribution formula for federal revenues obtained from the leasing of federally owned minerals falls within the power of Congress enumerated in the Property Clause of the Constitution:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. * * *

U.S. Constitution, art. IV, § 3, cl. 2.

The Mineral Leasing Act of 1920 is an example of the use of this power. Once having enacted such a system of mineral leasing, Congress has the authority under the Property Clause to change the distribution schedule set up with regard to the revenues resulting from those leases. As indicated in *United States v. Locke*, 471 U.S. 84, 104 (1985), "[t]he United States, as owner of the underlying fee title to the public domain, maintains broad powers over the terms and conditions upon which the public lands can be used, leased, and acquired." In the *Locke* case, the Supreme Court was called upon to determine the constitutionality of a legislative provision that subjected holders of unpatented mining claims to forfeiture of those claims if they failed to comply with the annual filing requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701. In holding the regulation to be constitutional, the Supreme Court indicated that "[c]laimants thus must take

³ The net effect of the amendment was to accord Alaska both the 37½ percent share enjoyed by all other states and the 52½ percent that would otherwise have gone to the Reclamation Fund, for a total of 90 percent. A succession of subsequent amendments to section 35, most recently in section 104(a) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1701, has changed these figures to 50 percent for states and 40 percent for the Reclamation Fund in states other than Alaska, and 90 percent for Alaska, to be distributed on a monthly basis.

⁴ Alaska also raises a number of political and policy issues arising from the historic relationship between the federal government and the states and, specifically, federal government and the new state of Alaska. We do not purport to address those political and policy issues in this memorandum.

their mineral interests with the knowledge that the Government retains substantial regulatory power over those interests." [The Court compared this holding to *Energy Resources Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400 (1983), dealing with the impairment of contractual relations.] *Id.* at 105.⁵

Against this background, Alaska must sustain a heavy burden to show that Congress lacks the authority under the Property Clause to change the distribution system for federal revenues derived from oil and gas leases on federal lands, including wildlife refuges.

Alaska's primary⁶ argument against Congress' power to enact a distribution formula for receipts from the lease of refugee minerals that is different from the formula set out in the MLA is that the MLA distribution scheme was incorporated into and made a part of the compact of statehood. According to that argument, the MLA was so incorporated by virtue of the inclusion in the Alaska Statehood Act of a section amending the MLA to apply it to Alaska. The State argues that Congress made the distribution formula part of the compact as a vehicle granting Alaska a permanent property interest in mineral revenues from public lands.⁷ According to the

⁵The people of Alaska implicitly acknowledged the powers reserved to Congress under the Property Clause when they agreed in the Alaska State Constitution that:

"The State of Alaska and its people forever disclaim all right and title or to any property belonging to the United States or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admitting Alaska to the Union. The State and its people further disclaim all right or title in or to any property, including fishing rights, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof, as that right or title is defined in the act of admission. The State and its people agree that, unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States. They further agree that no taxes will be imposed upon any such property, until otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation." (Alaska Constitution, art. 12, § 12.)

⁶Alaska also argues that a change in the distribution, such as that proposed in S. 735 would result in the State being treated differently than other states. Specifically, Alaska argues that it is the only state that has a refuge producing oil and gas revenues on reserved lands and, therefore, is the only state that will be impacted by a provision changing the distribution formula for reserved wildlife refuges. Although this appears to be primarily a policy issue, Alaska does suggest that the equal footing doctrine may be implicated by such unequal treatment. However, after reviewing this matter, we do not believe that it raises substantial legal questions. Factually, the proposed law would apply to all new leases on all wildlife refuges. As a factual matter, it is not clear that it would have an unequal impact in the long run. As a legal matter, even if there were an unequal impact, this impact would not constitute a violation of the equal footing doctrine. In *Nevada v. U.S.* 512 F. Supp. 166 (D. Nev. 1981), a case in which the State of Nevada challenged a moratorium on the disposal of public lands under the equal footing doctrine, the court accurately summarized this doctrine as follows:

"Federal regulation which is otherwise valid is not a violation of the 'equal footing' doctrine merely because its impact may differ between various states because of geographic or economic reasons. *Island Airlines, Inc. v. CAB*, 363 F.2d 120 (9th Cir 1966). The doctrine applies only to political rights and sovereignty; it does not cover economic matters, for there never has been equality among the states in that sense. *U.S. v. Texas*, 339 U.S. 707 (1950). Said case points out that, when they entered the Union, some states contained large tracts of land belonging to the federal government, whereas others have none. "The requirements of equal footing was designed not to wipe out these diversities but to create parity as respects political standing and sovereignty." *Id.*, at 716. Accordingly, Congress may cede property to one state without a corresponding cession to all states. . . . the equal footing doctrine does not affect Congress' power to dispose of federal property. . . ."

⁷In documents submitted to us, the State cites several instances in the legislative history of the ASA in which Members of Congress expressed an intent to provide Alaska with sufficient revenues to function as a state, and several other instances in which congressmen or reports cited the 90/10 distribution system. However, these expressions of intent do not answer the question of whether the 90/10 distribution was to be a permanent grant of a property interest and whether, by setting out such a formula in 1958, Congress sought to terminate its Property Clause powers with regard to federal mineral revenues from federal lands forever. Our analysis of the statutes and judicial precedent compel a negative answer to both questions that is not changed by the suggestion a general intention to provide the new state with revenue.

argument, as a grant made to the State in the compact of statehood, the property interest may not be changed. Thus the State argues that the distribution system comes within the narrow confines of *Beecher v. Wetherby*, 95 U.S. (5 Otto) 517 (1877), a case holding that a grant made in a statehood act is an "unalterable condition of the admission [of the State into the Union], binding upon the United States."

We do not dispute that a *grant made in a statehood act* may be unalterable. However, we believe that in this instance, Alaska paints too broadly the compact of statehood. Rather than being a grant incorporated into that compact, the distribution system applied to Alaska in section 28(b) is nothing more than an exercise of Congress' powers under the Property Clause to dispose of and make needful rules for the public's property.

Judicial precedent instructs that not every provision in a statehood act is an irrevocable grant to the state. Thus, we must look carefully at the provisions of the ASA to ascertain what must be included within the terms of its statehood compact with the United States. The Supreme Court has had occasion to consider the different kinds of authority Congress may exercise in passing a statehood act and what provisions of a statehood act may properly be considered part of the compact entered into at statehood. In *Coyle v. Oklahoma*, 221 U.S. 559 (1911), the Court held that certain conditions contained in Oklahoma's statehood act were not part of the compact of statehood. The Supreme Court pointed out that in admitting a new state into the Union, Congress may simultaneously exercise other of its powers, such as the power to regulate commerce or the power "to make all needful rules and regulations respecting the territory or other property of the United States" (citing *Pollard's Lessee v. Hagan*, How. 212 (1845)). The Supreme Court concluded that provisions contained in a statehood act that are enacted under one of these other powers, "cannot operate as a contract between the parties, but are binding as law." *Coyle*, at 571. The Court then went on to say:

It may well happen that Congress should embrace in an enactment introducing a new state into the Union legislation intended as a regulation of commerce among the states, or with Indian tribes situated within the limits of such new state, or regulations touching the sole care and disposition of the public lands or reservations therein, which might be upheld as legislation within the sphere of the plain power of Congress. But in every such case such legislation would derive its force not from any agreement or compact with the proposed new state, nor by reason of its acceptance of such enactment as a term of admission, but solely because the power of Congress extended to the subject.* * *

Id. at 574.⁸

⁸See also, *Nevada v. U.S.*, 512 F. Supp. at 171-172: "Regulations dealing with the care and disposition of public lands within the boundaries of a new state may properly be embraced in its act of admission, as within the sphere of the plain power of Congress." (Citing, *U.S. v. Sandoval*, 231 U.S. 28 (1913)).

Section 28 of the ASA is just such an enactment. It is based on Congress' power under the Property Clause to administer federal property interests. The MLA itself was similarly based, and the amendment to it contained in the ASA cannot be used to alter its origins or elevate it to compact status so that it cannot be amended.

Section 28 of the ASA, on its face, does not purport to be either a part of the compact between the United States and to the State of Alaska or a permanent grant of mineral revenues to the State. In fact, section 28 did nothing more than amend a statute that had already been in existence for over 30 years before the ASA was enacted and had long been applied to federal lands in all other states.⁹ Further, section 28 is but one of several sections added at the end of the ASA to amend existing law to apply it specifically to Alaska. Section 28(b) in particular was a necessary and timely expedient because Congress wanted to extend to and adapt for Alaska the revenue distribution system already in place in other states.

Further, section 28(b) is very limited in that it is applicable only to lands leased under the MLA, not to other federally owned lands leased under other authority. For example, section 35 of the MLA gave Alaska no share of receipts from the naval petroleum reserves, and Naval Petroleum Reserve No. 4 (now NPR-A), constituting roughly 23 million acres in Alaska, was separately addressed in Section 11 of the ASA. This separate treatment indicates that Congress did not intend, as argued by the State, that the MLA be a vehicle for an irrevocable 90 percent interest in revenues from all federal mineral lands.¹⁰ This point is further supported by a 1981 Supreme Court decision in which the Court found that a 1964 amendment to the Wildlife Refuge Revenue Sharing Act, which included mineral revenues within its 75/25 distribution schedule, was properly applied to oil and gas leasing revenues from wildlife refuges on acquired federal lands in Alaska. *Watt v. Alaska*, 451 U.S. 259 (1981).¹¹

⁹All of the contiguous lower 48 states had already been admitted to the Union when the MLA was passed in 1920. The MLA was not "incorporated" into the statehood act of any other state.

¹⁰The State's argument implies that 90 percent of MLA revenues goes to all states, not just Alaska. This argument appears to be based on an interpretation of the MLA whereby the 40 percent of MLA revenues which is earmarked for the Reclamation Fund ultimately is returned to the states in the form of reclamation projects. This argument has several problems. The assertion that the 40 percent of MLA receipts from states other than Alaska is returned to the generating states is illusory. In fact, any such money that are returned to the states arrive there only through an express appropriation from Congress after competing with other appropriations proposals, and there is absolutely no guarantee that such moneys as are appropriated will be proportionately returned to the states from which they were generated. The 90 percent provided to Alaska, however, is distributed directly to the State, to be disposed of as the state legislature directs. To the extent Alaska argues that it has been treated the same as other states in receiving the 90 percent share of MLA revenues, it implicitly admits that equal treatment would allow Congress to change the MLA formula for Alaska, because Congress clearly has the power to amend the MLA to affect the royalty shares of the other states. *New Mexico v. U.S.*, 11 Cl. Ct. 429 (1986); affirmed, —F.2d—, 87-1210 (1987).

¹¹The case cited in the text focused on section 401 of the Revenue Sharing Act, 16 U.S.C. § 715(c), which after the 1964 amendment provided that 25 percent of the receipts, including mineral receipts, generated by a refuge would go to the county in which the refuge was located and 75 percent to the Migratory Bird Conservation Fund. The Kenai Borough (the county in which the Kenai Moose Range is located), and the State of Alaska, each filed suit to challenge the federal interpretation that this formula applied to oil and gas revenues generated from the refuge. The U.S. District Court, District of Alaska, and the Ninth Circuit Court of appeals each found in favor of the state of Alaska, that is, that section 35 of the MLA and not section 401 of the WRRSA, controlled the distribution of receipts from Kenai Moose Range. The Supreme

Continued

Further, section 28 of the ASA did not purport to grant Alaska a 90 percent royalty interest in the minerals themselves. Rather, the section amended an entirely separate statute, the MLA, which itself does not grant the State any interest in minerals, but merely prescribes a formula for the distribution of certain federal oil and gas revenues. We have previously considered the issue of what interest states have in federal oil and gas under the MLA and concluded that they have no economic interest in the oil in place. As stated in Solicitor's Opinion M-36929, 87 I.D. 661, at 664, 665 (1980):

States have no pecuniary or legal interest in federally owned oil until that oil is leased, extracted and the royalty payments are made to the federal government. In sum, sec. 35 simply provides for the disposition of federal royalty revenue; it does not confer on states an economic interest in the oil in place. * * *

Therefore, under the amendment of the MLA contained in the ASA, the State receives only a periodic distribution of 90 percent of the revenues produced each year from the leasing and production of minerals under the MLA. Alaska receives no revenues under the MLA until such revenues are produced, and more importantly, receives its MLA royalty distribution only by virtue of the provisions of the MLA, not by virtue of the ASA.¹²

Our conclusion must be, then, that Congress was using the amendment to the MLA contained in section 28 not as a vehicle for granting the state a perpetual 90 percent interest in federal minerals in Alaska, but rather as an exercise of its authority under the Property Clause to dispose of and make needful rules for certain federal property, in this case, to set out the distribution scheme applicable to minerals leased under the MLA.

Our view that the MLA was not incorporated into the compact between the State and the federal government and that it does not amount to a permanent grant is supported by examples of cases in which Congress has exercised its Property Clause powers to amend the MLA since Alaska gained statehood to the detriment of Alaska's 90 percent interest in revenues from mineral leases. For example, on December 18, 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601, *et seq.*, amending the royalty distribution ratio of the MLA to reduce the State's share of royalties and pay a portion to Alaska Native corporations. Section 9 of ANCSA, 43 U.S.C. § 1608, provided in part that a royalty of 2 per centum of the gross value of minerals and 2 per centum of all rentals and bonuses would be deducted from the mineral revenues from public lands and paid to the Alaska Native Fund. Prior to ANCSA, the standard royalty on oil and gas leases was 12.5 percent of production. This meant 1.25 percent went to the U.S. Treas-

Court held that the 1964 amendment clearly covered oil and gas receipts, but also found that it has not been the intent of Congress to amend section 35 of the MLA. Therefore, the court ruled that the WRRSA applied to oil and gas receipts from acquired lands in wildlife refuges, but not to reserved public lands in wildlife refuges. *Watt v. Alaska*, U.S. 259 (1981). Even though the Court distinguished between acquired lands in refuges and public domain, this decision supports the proposition that Congress is not bound by the ASA to give Alaska 90 percent of oil and gas leasing revenues from all federally owned land.

¹² In contrast for example, the ASA explicitly granted Alaska 103,350,000 acres of land, which vested upon enactment.

ury, and 11.25 percent went to the State of Alaska, whereas after ANCSA these percentages were 1.05 and 9.45, respectively.

Similarly, the Crude Oil Windfall Profit Tax of 1980, Pub. L. No. 96-223, 94 Stat. 229 (1980), exacts a tax on MLA revenues prior to the application of the revenue sharing formula. *New Mexico v. U.S.* 11 Cl. Ct. 429 (1986), affirmed—F.2d—, No. 87-1210 (1987), *See also*, Solicitor's Opinion M-36929 *supra*.

These examples clearly demonstrate Congress' continuing authority to change the distribution scheme for mineral revenues from federal land whenever it perceives a need to do so.

CONCLUSION

For the reasons stated, we must conclude that Congress has the authority under the Property Clause of the Constitution to alter the distribution formula set out in the Mineral Leasing Act for oil and gas revenues from the Arctic National Wildlife Refuge. The State of Alaska has not met the heavy burden of persuasion with respect to the argument that those Property Clause powers were terminated by the section in the Statehood Act amending the MLA to include Alaska in the act's revenue distribution formula. We can find no support in the Alaska Statehood Act for the proposition that the MLA was incorporated into the compact between the federal government and the State. In fact, opposite the proposition, we find other instances in which Congress has amended the MLA in a manner which adversely affected the State's interests.

RALPH W. TARR.

U.S. DEPARTMENT OF JUSTICE,
ENVIRONMENT AND NATURAL RESOURCES DIVISION
Washington, DC, May 8, 1991.

Re Arctic National Wildlife Refuge.

Mr. PAUL SMYTH,
Acting Associate Solicitor, Energy & Resources, Department of the Interior, Washington, DC.

DEAR MR. SMYTH: I have reviewed Solicitor's Opinion M-36957 concerning the eventual division of oil and gas revenues from the Arctic National Wildlife as you recently requested. I concur in its conclusion that for ANWR Congress may alter the 90/10 distribution set out in the Mineral Leasing Act.

Although it may be premature to say that we would arrive at our conclusion through the same analysis followed in the Opinion, we are convinced that Congress may authorize the altered distribution and would certainly feel comfortable defending that conclusion in court.

Thank you for making us aware of this potential issue in advance of litigation. We would be interested in knowing what Congress ultimately decides.

Sincerely,

MYLES E. FLINT,
Deputy Assistant Attorney General.